

CONRAIL



12259

RECORDATION NO. .... Filed 1426

OCT 6 1980 -3 00 PM

October 6, 1980

INTERSTATE COMMERCE COMMISSION **0-230A134**

Ms. Mildred Lee  
Recordation Clerk  
Room 2303  
Interstate Commerce Commission  
12th and Constitution Avenue  
Washington, D. C. 20423

OCT 6 1980  
Date  
Fee \$ 50.00  
ICC Washington, D. C.

Dear Ms. Lee:

We are presenting the Assignment and Assumption of Lease, dated as of August 1, 1980 by and between William M. Gibbons, as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Assignor") and Consolidated Rail Corporation (the "Assignee") to be filed pursuant to 49 USC §11303.

Enclosed is our check for \$50 to cover the recordation fee. After recording four (4) counterpart originals of this document (3 sets), please return the remaining copies, stamped with your recordation number to the individual presenting them for recordation.

Sincerely yours,

*Judith Coleridge*

Judith Coleridge  
Legal Assistant

JC:ld  
Enclosures

RECEIVED  
OCT 6 2 57 PM '80  
I.C.C.  
FEE OPERATION BR.

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**10/6/80**

**OFFICE OF THE SECRETARY**

**Judith Coleridge**  
**Legal Assistant**  
**Conrail**

Dear **Ms. Coleridge:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **10/6/80** at **3:00pm**, and assigned re-recording number(s). **12259**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

12259  
RECORDATION NO. .... Filed 1425

OCT 6 1980 - 3 00 PM

ASSIGNMENT AND ASSUMPTION OF LEASE INTERSTATE COMMERCE COMMISSION

THIS ASSIGNMENT AND ASSUMPTION of lease (the "Assignment") dated as of this first day of August, 1980 by and between William M. Gibbons, as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Assignor") and Consolidated Rail Corporation (the "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is the lessee of certain units of railroad equipment described in Exhibit A attached hereto and made a part hereof (the "Equipment" or the "Units" or individually a "Unit") pursuant to the Lease of such Equipment dated as of March 15, 1978 between the Assignor and Unilease No. 24, Inc. (the "Lessor"), as amended to date and attached hereto as Exhibit B (the "Lease");

WHEREAS, to induce the Lessor to consent to this assignment, North American Car Corporation (the "Guarantor") has agreed, pursuant to a Guarantee Agreement (the "Guarantee") dated as of July 31, 1980 with the Lessor, to guarantee all obligations and covenants of the Assignee under this Assignment and under the Lease; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to accept an assignment from Assignor of all of Assignor's right, leasehold title and interest under the Lease and to the Equipment subject to the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of Assignor and Assignee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Definitions. For all purposes of this Assignment, unless otherwise expressly provided herein, all initially capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Lease.

2. Effective Date. The Effective Date of this Assignment shall be the later of (1) the latest of the dates set forth opposite the signature lines of the Assignor, Assignee, Lessor and Agent and (2) receipt by the Lessor of an opinion of counsel for the Assignee pursuant to Section 6 hereof; provided, however, that this Assignment may be terminated after the Effective Date pursuant to the provisions of Section 19 hereof.

3. Assignment. As of the Effective Date, Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest under the Lease and to the Equipment, subject to the terms and conditions set forth in Sections 2, 4, 13 and 19 hereof.

This Assignment shall be effective only as to the equipment described on Exhibit A hereto.

4. Assumption. Assignee hereby accepts the assignment set forth above and assumes all of the obligations of Lessee under the Lease with respect to the Equipment arising after the Effective Date and agrees to perform and comply with all of the obligations, covenants and conditions of Lessee under the Lease other than obligations or representations of said Lessee referring to a particular point in time prior to the Effective Date.

Assignee shall be responsible for the payment of rent due under the Lease and the performance and compliance with all other terms and conditions of the Lease required to be performed by Lessee under the Lease beginning as of the Effective Date of this Assignment. Assignee expressly does not assume any liabilities or obligations arising under or which have accrued in whole or in part pursuant to the terms of the Lease prior to the Effective Date; provided, however,

that the Assignee shall be responsible for that portion of any liability or obligation which shall have accrued in part after the Effective Date; and provided further, however, that the Assignee shall be responsible for only those liabilities or obligations arising from use of the Equipment outside the United States which result solely and directly from use of the Equipment after the Effective Date.

Subject to the provisions of the next succeeding sentence and Section 19 hereof, as of the Effective Date, Assignor will be released from its obligations under the Lease. Anything to the contrary in this Assignment notwithstanding, any liabilities or obligations of any kind whatsoever arising from the Lease (including, but not limited to, liability for loss of tax benefits pursuant to Section 21 thereof) which are not assumed by the Assignee remain the responsibility of the Assignor and are expressly not released pursuant to this Assignment.

5. Related Documents. The Assignee acknowledges that the Lease, as modified by this Assignment, and the Equipment are subject to the terms and conditions of (1) a Finance Agreement, dated as of March 15, 1978 between Girard Trust Bank (formerly Girard Bank), as Agent (the "Agent") and The Paul Revere Life Insurance Company (the "Investor"),

(2) the Conditional Sale Agreement, (3) the Assignment, (4) the Lease Assignment dated as of March 15, 1978 from the Lessor to the Agent, and (5) that certain "Letter of Agreement re March 15, 1978 Finance Agreement" dated as of March 31, 1980 among the Lessor, the Investor, and the Agent (these five documents, together with the Lease being hereinafter referred to collectively as the "Operative Documents").

6. Markings and Filings. Assignee agrees to restencil and renumber the Equipment at Assignee's expense to eliminate the reporting marks of Assignor and/or Chicago, Rock Island and Pacific Railroad Company as soon as reasonably possible after the Effective Date. Assignee further agrees to preserve the markings of the Lessor and the Agent required pursuant to the Conditional Sale Agreement and the Lease.

Assignee agrees to make, at Assignee's expense, such filings, deposits, and publications as may be required under the Operative Documents and under any encumbrance on the Lease or the Equipment created by or pursuant to the Operative Documents, so as to preserve all security interests created by or pursuant to the Operative Documents and to reflect this Assignment and the renumbering of the Equipment. Such filings, deposits, and publications shall be made on or

prior to the Effective Date. Assignee shall, within twenty (20) days after such filings, provide to the Lessor and the Agent copies of the filed, deposited, or published documents.

The Assignee agrees to provide the Lessor and the Agent an opinion of counsel for the assignee, dated as of the Effective Date, in form and substance satisfactory to it and to Messrs. Donovan Leisure Newton & Irvine, special counsel to the Lessor, to the effect that the terms and conditions of Section 17M hereof have been complied with and that all statements and facts represented and warranted by the Assignee in such Section 17M are true and accurate to the best knowledge of such counsel as of the date of such opinion.

7. Modification of Lease. As of the Effective Date, the Lease is modified in accordance with Exhibit C hereto, subject to the Lessor's and Agent's consent and subject to the provisions of Section 19 hereof.

8. Third Party Beneficiary. The parties hereby acknowledge that both the Lessor and the Guarantor are third party beneficiaries of this Assignment.

9. Change in Assignment. This Assignment may not be modified, amended or changed in any way without the express written consent of the Lessor.

10. Payments and Prorations. Assignee agrees to pay, in addition to and totally separate from, rental payments



due pursuant to Section 3 of the Lease, periodic payments to the Guarantor and the Assignor in accordance with Exhibit A hereto at such times as rental payments are due under the Lease beginning, with respect to each Unit of Equipment, on the first rental payment date occurring after both the Effective Date and the first date such Unit is both under the control of the Assignee and in Satisfactory Condition, and ending, with respect to each Unit of Equipment, on the earlier of the date on which the last rental payment due under the Lease is paid (excluding the term of any exercised renewal options) or the date on which the Casualty Value with respect to such Unit of Equipment is paid. The first periodic payments to the Assignor, and the Guarantor (and any accrued or prepaid items or obligations) shall be prorated on a per diem and per Unit basis from the first date after the Effective Date upon which each Unit is both under the control of the Assignee and in Satisfactory Condition to the next periodic rental payment date under the Lease immediately following such date.

The Guarantor shall calculate the foregoing payments and shall invoice Assignee and Assignor. Assignee and Assignor agree to pay the prepaid or accrued items and obligations within 10 days after receipt of invoice.

The Assignor agrees to make all rental payments due under the Lease prior to the Effective Date.

11. Petitions. Assignee agrees to make, and Assignor agrees to cooperate with respect to, all filings with the Interstate Commerce Commission and all deposits with the Registrar General of Canada, which are necessary to protect the security interests of the Lessor and the Agent in the Lease and the Equipment, and Assignor agrees to make, with Assignee's cooperation, any petition to the Reorganization Court which is necessary pursuant to this Assignment.

12. Equipment Compensation and Use. The Assignor shall be entitled to all compensation with respect to the Equipment and its use prior to the Effective Date, and Assignee shall be entitled to all such compensation and use thereafter. Assignor and Assignee agree that they shall respectively bear the risks and rewards of the Equipment and the Lease arising before and after the Effective Date. Nothing in this Section 12 shall affect the respective obligations of the Assignor and the Assignee under the Lease.

13. Possession, Inspection and Repair. Possession of the Equipment shall be delivered to Assignee as soon after the Effective Date as is reasonably possible or at any time prior thereto upon mutual agreement of all parties hereto.

Assignor's performance under this Section may be delayed by reasons beyond Assignor's reasonable control including without limitation, possession of Units by others.

The Equipment shall be delivered to Assignee, at the points of interchange with Assignee's lines which are nearest the then current locations of the Equipment, whether the Equipment is then currently on the lines of Assignee or on other lines. Assignee shall pay all costs of movement of the Units from their current locations to the points of interchange with Assignee's lines. Assignee shall inform the Guarantor and the Assignor of the delivery times and locations of the Units. The Assignee and the Assignor, or an agent of Assignor, shall jointly inspect the Equipment. If any Unit is not found to be in condition acceptable under FRA safety standards and for AAR unrestricted interchange in good operating condition, ordinary wear and tear excepted ("Satisfactory Condition"), at the option of the Assignee, designated by notice in writing to Assignor and Guarantor within 10 days after such inspection, the Assignee shall select one of the following alternatives:

- (a) If a Casualty Occurrence as defined in the Lease has occurred such Unit shall be excluded from the provisions of Section 3 hereof and Assignor shall pay the Casualty Value for such Unit as specified in the Lease; or

- (b) Such unit shall be repaired at the Assignee's expense by the Guarantor at the Guarantor's usual rate of charges which is subject to change without notice; or
- (c) Such Unit shall be repaired at the Assignee's expense at a repair facility designated by the Guarantor at such facility's usual rate of charges; or
- (d) Such Unit shall be repaired at the Assignee's expense at a repair facility operated by Assignee at such facility's usual rate of charges, such repairs to be done on a timely basis not to take longer than similar repairs done on cars owned by the Assignee.

The repair described in (b), (c) or (d) above shall be limited to the repair of any damage or condition discovered at the inspection and which renders, in the reasonable opinion of the inspectors, the Unit not in Satisfactory Condition.

Assignee shall pay the cost of repair pursuant to (b), (c) or (d) above, but may deduct from the Periodic Payments to the Assignor as shown in Exhibit A the cost of repair plus interest on the portion of such costs unreimbursed, from time to time, at the rate of 12 percent (12%) per annum.

If notice in writing with respect to the inspection is not received by the Guarantor within ten (10) days after delivery of each Unit of Equipment or if the Assignee does not participate in the inspection described above, any obligation to pay the Casualty Value for such Unit of Equipment pursuant to the Lease shall become the responsibility of the Assignee, and to the extent that the Assignee assumes

all of Assignor's obligations under this Section 13 with respect to such Unit of Equipment, such obligations of the Assignor shall thereupon become null and void and of no further effect.

The Assignor's inspection may be made by an inspector of Assignor which inspector may be selected by the Guarantor.

14. Set-offs for Late Delivery and Repair. To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit for a period when such Unit is not both delivered to the Assignee and in Satisfactory Condition, the Assignee may set-off such rental payment, including interest on the portion of such amount as remains unreimbursed, from time to time, at the rate of 12 percent (12%) per annum, against the Periodic Payments to both the Assignor and the Guarantor, as shown in Exhibit A hereto.

To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit which is not in Satisfactory Condition prior to completion of repair thereof or incurs charges for repairs to a Unit pursuant to Section 13(d) hereof, the Assignee may set-off such payments or charges against the Periodic Payments to the Assignor as shown in Exhibit A hereto, such set-off to be junior in priority to and paid after any set-off allowed pursuant to the first paragraph of this Section 14.

To the extent that any amounts owed to the Lessor by the Assignor under the Lease remain due, the Assignee shall set-off such amounts against the Periodic Payments to the Assignor as shown in Exhibit A hereto and pay such amounts directly to the Lessor, such set-off to be junior in priority to and paid after any set-offs allowed pursuant to the first two paragraphs of this Section 14.

15. Fees and Expenses. Assignee shall pay on demand inspector's fees and movement expenses relating to delivery of the Equipment, costs of restenciling and cost of publication under restenciled numbers in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

16. Limitations on Set-Off. The Assignee is hereby informed of the interests of the Lessor in the rental payments due under the Lease and the interests of the Assignor and the Guarantor in the periodic payments due hereunder as described in Exhibit A hereto, and that the agreements contained in this Section are a material consideration for the Assignment. Notwithstanding any other obligations of the Assignor to the Assignee, or any claim which the Assignee may now have or acquire in the future against the Assignor, Assignee agrees that all payments hereunder shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever except as permitted under Sections 11 and 12 hereof. Any and all such obligations,

if any, howsoever arising, shall be and remain enforceable by Assignee against the Assignor and the Property of the Chicago, Rock Island and Pacific Railroad Company.

17. Warranties and Representations of the Assignee.

The Assignee warrants and represents to each of the other parties hereto as follows:

A. This Assignment has been duly authorized, executed and delivered by the Assignee and constitutes a valid, legal and binding obligation of the Assignee, enforceable in accordance with its terms;

B. Neither the execution and delivery of this Assignment nor the consummation of the transaction herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Assignee will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Assignee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

C. The Assignee shall not operate or otherwise utilize the Units in any and all jurisdictions for which any approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary or in which the Assignee shall become subject to such jurisdiction or regulation, until the Assignee shall have either (i) obtained such approvals, orders or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Unit or Units in any and all such jurisdictions, except for claims, liabilities penalties or damages arising from acts or omissions of the Lessor;

D. The Assignee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has the corporate power and authority and legal right to carry on its business as now conducted and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect



its ability to perform its obligations under the Operative Documents or the interests of any other party hereto;

E. There is no proceeding pending, or to the knowledge of the Lessee threatened against or affecting the Lessee or any of its property in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Assignee, or the ability of the Assignee to perform its obligations under this Assignment, except as set forth in the Memorandum for Private Investors dated May 1, 1980 as supplemented on June 26, 1980 and August 18, 1980 (the "Memorandum"), furnished to the parties hereto. The Assignee is not in default with respect to any judgment, award or order of any court, governmental authority or arbitration board or tribunal, except as set forth in the Memorandum. Since June 30, 1980, there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Assignee, except as set forth in the Memorandum.

F. Except as set forth in the Memorandum, all tax returns required to be filed by the Assignee in any jurisdiction have in fact been filed, and all taxes, assessments, fees

and other governmental charges upon the Assignee, or upon any of its properties, income or franchises, which are due and payable by the Assignee have been paid or are being contested in good faith in an appropriate manner and the provisions for taxes on the books of the Assignee are adequate. The Assignee does not know of any proposed or potential additional material tax assessment or basis for such assessment against it.

G. The Assignee has furnished to the Vendee, the Lessor and the Investor the consolidated balance sheets of the Assignee for the periods ending June 30, 1980 and December 31, 1979, and the related consolidated statements of income and retained earnings for the periods then ended, certified, in the case of the year-end statements, by Coopers & Lybrand, independent certified public accountants, and, in the case of the June 30, 1980 statements, by the Chief Financial Officer of the Assignee; such consolidated financial statements are in accordance with the books and records of the Assignee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby; and such statements present fairly the financial condition of the Assignee at such dates and the results of its operations for such periods.

H. As of the Effective Date, the Assignee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Units, except only for the rights of the Assignee and the Assignor under this Assignment and the Lease.

I. As of the Effective Date, the Units are free from all claims, liens, security interests and other encumbrances arising at any time on or after the Assignee has accepted delivery of such Units pursuant to Section 13 of this Assignment other than those created by the Operative Documents, the rights of the Assignor and Assignee under this Lease, and other than those resulting from claims against the Lessor not related to the ownership of the Units.

J. The Assignee is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business, which violation or failure to obtain might materially and adversely affect its ability (financial or other) to perform its obligations under this Assignment and the Lease.

K. Except as set forth in the Memorandum the Assignee has good title to or valid leasehold estates in all the property it purports to own or lease (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet referred to in Section 17G (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

L. The financial statements referred to in Section 17G do not, nor do the Memorandum or any other written statement furnished by the Assignee in connection with the transactions contemplated thereby, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein not misleading.

M. This Assignment has been duly filed pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway General of Canada and such filing pursuant to 49 U.S.C. § 11303 protects the Lessor's rights in and to the Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state

or local government or agency thereof is necessary in order to protect the rights of the Agent or the Lessor under this Assignment or the Lease in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor under the Lease in Canada or any province thereof.

N. The Assignee is not in default in the payment of the principal of or interest on any indebtedness for borrowed money.

O. The Assignee represents that it is not entering into this Assignment, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, the Investor, the Builder or the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

In the event that any representation herein set forth which is qualified by a reference to the knowledge of the Assignee shall prove inaccurate in any material respect, the Assignee shall promptly use its best efforts to remedy or cure such condition to the extent necessary to restore

the accuracy of such representation, and shall indemnify and hold harmless the Owner, the Lessor, the Agent and the Investor from all liabilities, damages or costs arising out of such inaccuracy.

18. Warranties and Representations of the Lessor.

The Lessor warrants and represents to each of the other parties hereto as follows:

A. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and has the corporate power, authority and legal right to carry on its business as now conducted and is duly authorized to execute and deliver the documents required of it under this agreement (Documents) and to fulfill and comply with the terms, conditions and provisions of those documents and the Operative Documents.

B. Its Documents and Operative Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding agreements of the Lessor, enforceable against the Lessor in accordance with their terms.

C. The execution, delivery and compliance by the Lessor with the provisions of its Documents and Operative

Documents do not and will not conflict with, result in a breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessor under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Lessor is a party or by which it or any of its property may be bound.

(D) It has made and continued its investment pursuant to the Operative Documents with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan) within the meaning of ERISA.

19. Termination and Reversion. If, within 40 days after the Effective Date, an order has not been entered by the Court in the Reorganization Proceedings (i) approving this Assignment, and (ii) confirming that this Assignment vests in Assignee all of Assignor's right, title and interest in the Lease with respect to the Equipment, then, at the request of the Lessor or the Assignee, the release of the Assignor's obligations under the Lease and the Assignee's assumption of rights and obligations under the Lease shall be terminated. In the event of a termination pursuant to the next preceding sentence: (i) Assignee shall reassign the

Lease to the Assignor, and Assignor shall reassume the obligations under the Lease as of the date of the request of the Lessor or the Assignee, (ii) the Assignee shall deliver all Units which are on Assignee's lines or under Assignee's control to Assignor's nearest interchange point as soon as reasonably possible, (iii) the Assignor shall be responsible to pay to the Assignee, as a cost of administration, an amount equal to the difference of (a) the sum of the amount paid by the Assignee as a rental payment under the Lease, and the costs of all repairs to the Units performed by the Assignee pursuant to this Assignment, less (b) the sum of daily rental charges at a rate of \$10 per Unit per day for each Unit in Satisfactory Condition and under the Assignee's control from and including the first day (after the Effective Date) upon which the Assignee had control of such Unit in Satisfactory Condition to and including the day the Assignee delivers such Unit to an interchange point of the Assignor, (iv) the obligation of the Assignee to make periodic payments to the Guarantor and the Assignor pursuant to Section 10 hereto shall terminate, and (v) the modifications to the Lease specified in Section 7 and Exhibit C hereto, shall be of no further force or effect, and the Lease shall thereafter read as if such modifications had not been made.

In the event of a termination pursuant to this Section 19, the Assignee shall continue to be responsible



to the Lessor, as to each Unit, for any liabilities or obligations which became due pursuant to Sections 6 or 7 of the Lease during the period from and including the date each Unit was delivered to an interchange point of the Assignee to and including the date such Unit is delivered by the Assignee to an interchange point of the Assignor.

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20. Section Headings. The headings of sections contained in this Assignment are inserted for convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

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21. Execution. This Assignment may be executed in counterparts, each of which so executed shall be deemed to be an original, provided that all such counterparts, taken together, shall constitute but one and the same agreement.

22. Entireties. This Assignment, together with the Guarantee, sets forth the entire agreement among the parties hereto with respect to the subject matter hereof.

23. Governing Law. This Assignment shall in all respects be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Assignor and Assignee have

- 24 -

CONSENT AND LEASE MODIFICATION

Each of the undersigned hereby consents to the Conrail Assignment and Assumption of Lease (the "Conrail Assignment") of which this Consent forms a part and agrees that, pursuant to the provisions of the Conrail Assignment, and as of the Effective Date, the Assignor thereunder is, subject to the limitations set forth in the Conrail Assignment, released of all of Assignor's obligations under the Lease arising after the Effective Date of the Conrail Assignment but is not released of liabilities arising in whole or in part pursuant to the terms of the Lease prior to the Effective Date.

Each of the undersigned hereby acknowledges that:

- (1) It has received a copy of the Conrail Assignment;
- (2) Attached to the Conrail Assignment as Exhibit B is a true copy of the Lease as amended to date;
- (3) As of the Effective Date, the Assignee is substituted as the Lessee under the Lease, on the terms set forth in the Conrail Assignment;

- (4) With respect to the obligations under the Lease arising prior to the Effective Date of the Conrail Assignment, the undersigned shall have recourse only against the Assignor or parties other than the Assignee for either damages or the correction of any default pursuant to the Lease arising prior to, or as a result of events occurring prior to, the Effective Date of the Conrail Assignment and hereby waive all rights to terminate the Lease which may arise solely as a result of the Conrail Assignment, all on the terms set forth in the Conrail Assignment;
- (5) The Assignee shall be permitted to change the identification numbers and reporting marks on the Equipment provided that (1) the Assignee promptly notifies the undersigned of any such change and preserves the markings on, and registration of, the Equipment disclosing and preserving the security interest of third parties as presently disclosed and (2) the Assignee makes such filings and deposits as are required to fulfill its representations and warranties pursuant to Section 17M of the Conrail Assignment;

- (6) Subject to Section 19 of the Conrail Assignment the Lease is hereby modified in accordance with Section 7 of the Conrail Assignment and the undersigned hereby consent to such modification; and
- (7) The Conditional Sale Agreement is hereby amended to permit the possession and use by Assignee of the Units listed in Exhibit A to the Conrail Assignment, pursuant to the Lease as amended. So long as the Assignee is not in default under the Lease, as amended, the secured party under the Conditional Sale Agreement shall not interfere with the Assignee's right of quiet enjoyment with respect to the Equipment.

IN WITNESS WHEREOF, the undersigned have caused this consent to be executed and sealed by their duly authorized officers on \_\_\_\_\_, 1980.

LESSOR:

UNILEASE NO. 24, INC.

By

J. A. Orefino  
Vice President

(SEAL)

ATTEST:

C. Rapp  
Assistant Secretary

GIRARD BANK, AS AGENT

(SEAL)

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared William M. Gibbons, to me personally known, who, being by me duly sworn, says that he is the Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, signer and sealer of the foregoing instrument, and he acknowledged same to be his free act and deed, as Trustee, before me.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the Vice President of Consolidated Rail Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF New York )  
COUNTY OF New York ) SS.

On this 26 day of September, 1980,  
before me personally appeared Charles Rocklen, to  
me personally known, who, being by me duly sworn, says  
that he is the Vice President of Unilease No. 24, Inc.,  
that one of the seals affixed to the foregoing instrument  
is the corporate seal of said corporation, that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the  
free act and deed of said corporation.

Margaret T. Bice  
Notary Public

[Notarial Seal]

MARGARET T. BICE  
Notary Public, State of New York  
No. 01B14700189

My Commission expires: Qualified in Nassau County  
~~Commission Expires March 09, 1981~~

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is the Vice President of Girard Bank, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the  
foregoing instrument was the free act and deed of said  
corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_



EXHIBIT ATO ASSIGNMENT AND ASSUMPTION OF LEASE

<u>UNIT DESIGNATION</u>	<u>NUMBER OF UNITS</u>	<u>RENTAL PAYMENT TO LESSOR PER UNIT</u>	<u>PERIODIC PAYMENT TO ASSIGNOR PER UNIT*</u>	<u>PERIODIC PAYMENT TO GUARANTOR PER UNIT*</u>
2494 C.F. Gondola Cars 52' - 100 ton (Rock Island Road Numbers 400100-400199, inclusive)  (Conrail Road Numbers - inclusive)	100	\$771.56	\$32.11	\$96.33

- 
- \* The Periodic Payments to the Assignor and the Guarantor shall be payable as directed by the Assignor and the Guarantor respectively.

EXHIBIT C

The Lease is modified as noted below.

- (a) The Lease is modified to substitute, as of the Effective Date, Assignee as "Lessee" with respect to the Equipment.
- (b) In Section 4, the first paragraph is amended by deleting beginning with the words "and (b) the date" in the fifth line of said paragraph through and including the words "Debtor for such rental" in the nineteenth line of said paragraph, and by deleting the words "the earlier of(a)" in the fifth line of said paragraph.
- (c) Section 7, lines 2-6 are deleted and the following substituted therefore:

"of Loss. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, such taking or requisitioning resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this lease (such occurrences being hereinafter called Casualty Occurrences),"

- (d) Section 8 is amended to read in its entirety as follows:

Section 8. Annual Reports. On or before April 30 in each year, but not under any circumstance later than May 30 of each year, commencing April 30, 1981, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the Effective Date of the Assignment and Assumption of Lease in the case of the first such statement) after said Effective Date and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request; (b) an accurate statement stating that, in the case of all Units repainted and repaired

during the period covered by such statement, the numbers and the markings required by paragraph 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced; (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles consistently applied and audited and certified by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor and Agent; (d) a certificate of an officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease."

- (e) Section 10, paragraphs (E) and (F) are deleted and replaced by the following:

"(E) a petition for reorganization under Section 1161 et seq of the Bankruptcy Code (as now constituted or as hereafter amended, including any successor provision thereto) or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168, or any successor provision, as the same may hereafter be amended; or

"(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been continued in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168 or any successor provision, as the same may hereafter be amended, or pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier."

- (f) Section 10 is further amended by adding the following paragraphs to the end of said section:

The Lessor shall forbear exercising its remedies hereunder arising out of an Event of Default pursuant to this Section 10 if, and so long as, (1) within 10 days of such Event of Default North American Car Corporation, as Guarantor (the "Guarantor") under a Guarantee Agreement entered

into as of July 31, 1980 with the Lessor (the "Guarantee"), shall have paid in full any unpaid monetary obligations due under this Lease, and (2) within thirty (30) days the Guarantor shall have cured any other Event of Default under this Lease. The Guarantor shall not be required to cure any Event of Default under this Lease the cure of which would require information or knowledge which the Guarantor cannot obtain with reasonable diligence and at reasonable expense. At any time after the Guarantor shall have made any payment under (1) above or cured any other default pursuant to (2) above or if there shall be an Event of Default hereunder caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of proceedings of the type described in item (F) of this Section 10, the Guarantor, at its option, may assume all the obligations of the Lessee provided that the following conditions have been met:

- (i) The Guarantor certifies to the Lessor that it is not then in default in respect of any obligations for the payment of principle or interest in respect of borrowed money, any conditional sale indebtedness or any equipment trust obligation;
- (ii) The Guarantor certifies to the Lessor that upon such assumption the Guarantor will not be in default under this Lease, which certification shall be accompanied by an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the same effect;
- (iii) The Guarantor directly assumes all the obligations of the Lessee under this Lease pursuant to an Assumption Agreement in form and substance satisfactory to the Lessor (the approval of which by such party shall not be unreasonably withheld), which

Assumption Agreement will, at the option of the Guarantor and without any approval of the Lessor, provide that those Sections of this Lease listed in Exhibit A to the Guarantee Agreement described above will be amended on and as of the effective date of such Assumption Agreement to read as provided in said Exhibit A; and

- (iv) The Guarantor delivers to the Lessor an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the effect that such Assumption Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms (except to the extent limited by any bankruptcy or other similar laws) and shall have caused such Assumption Agreement to be filed and recorded in accordance with the provisions of Section 16 hereof.

The Lessor agrees to execute and deliver the above mentioned Assumption Agreement within 10 days after tender thereof, provided that it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it and that all other procedures referred to above have been complied with. The Lessee agrees that, upon execution and delivery of such Assumption Agreement by the Lessor and the Guarantor, all rights of the Lessee to the use of the Units shall absolutely cease and terminate, but the Lessee shall remain liable as herein provided and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Lessor; it being understood and agreed however, that the obligations of the Guarantor under such Assumption Agreement,

this Lease and the Guarantee shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

Compliance by the Guarantor with the procedures necessary for assumption as noted above in this Section 10 and the execution and delivery of the above mentioned Assumption Agreement by both the Guarantor and the Lessor shall for the purposes of this Lease constitute a cure of any Event of Default caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of any proceedings of the type described in item (F) of this Section 10.

The Lessor agrees to notify the Guarantor promptly in writing upon its becoming aware of any condition or event which constitutes an Event of Default hereunder, but any failure to do so shall not affect in any way the rights and remedies of the Lessor under this Lease and the Guarantee.

- (g) Section 11, paragraph 2 is amended by deleting the period at the end of such paragraph and adding at the end of the paragraph the following:

"provided however, that such storage shall not exceed 180 days (such 180 day period to be referred to as the 'Storage Period')."

- (h) Section 11, paragraph 3 is amended by deleting the period at the end of the paragraph and adding the following:

"provided however, that such storage shall not exceed the Storage Period."

- (i) Section 11, paragraph 4, lines 1-3 are deleted and the following substituted therefor:

"The assembling, delivery, storage and transportation of the Units during the Storage Period as herein provided shall be at the cost, expense and risk of the Lessee. During the Storage Period"

- (j) Section 12, paragraph 4 is deleted and the following paragraphs inserted in lieu thereof:

"So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights over which railroad equipment of the Lessee, or any such affiliate, is regularly operated pursuant to contract, and also to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of the Lease and the Conditional Sale Agreement; provided however, that the Lessee shall not use or permit the use of any Unit in service involving the operation and maintenance thereof outside the United States of America, except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America.

"The Lessee agrees that at all times during the terms of this Lease, the Units will be used as rolling stock within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38 property" within the meaning of the Code."

- (k) In Section 14, all references to "early termination" pursuant to clause (b) of Section 4 are deleted.
- (l) All references to "Lessee" in Section 15, are amended to refer to the "Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company", except in paragraphs D, E., and K, and the following is added to the end of paragraph J:



"This Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment have also been duly filed and recorded with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada."

- (m) Section 16, paragraph 1 is amended by deleting the period at the end of the first sentence and then substituting the following in lieu thereof:

"and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada."

- (n) Section 18(b) of the Lease is amended in its entirety to read as follows:

"If to the Lessee, to

Conrail Corporation  
1138 Six Penn Central Plaza  
Philadelphia, Pennsylvania 19104  
Attn: Legal Department"

- (o) Section 20 is amended in its entirety to read as follows:

"The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor as an additional named insured or loss payee, as its interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event),

shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1981, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to a Unit and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respects of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this paragraph 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing."

- (p) Section 21 is amended by adding the following paragraph to the end of said Section:

"Anything to the contrary in this Section 21 notwithstanding, Consolidated Rail Corporation ("Conrail") as assignee of the Trustee of the Property of the Chicago Rock Island and Pacific Railroad Company, hereby agrees to indemnify Lessor only for loss of tax benefits arising out of Conrail's acts or omissions.

- (q) Schedule A is amended by deleting the entry in the column headed "Lessee's Road Numbers" and by replacing such entry with the following: "Conrail Numbers \_\_\_\_\_ -  
\_\_\_\_\_."

12259  
RECORDATION NO. .... Filed 1426

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INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION of lease (the "Assignment") dated as of this first day of August, 1980 by and between William M. Gibbons, as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Assignor") and Consolidated Rail Corporation (the "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is the lessee of certain units of railroad equipment described in Exhibit A attached hereto and made a part hereof (the "Equipment" or the "Units" or individually a "Unit") pursuant to the Lease of such Equipment dated as of March 15, 1978 between the Assignor and Unilease No. 24, Inc. (the "Lessor"), as amended to date and attached hereto as Exhibit B (the "Lease");

WHEREAS, to induce the Lessor to consent to this assignment, North American Car Corporation (the "Guarantor") has agreed, pursuant to a Guarantee Agreement (the "Guarantee") dated as of July 31, 1980 with the Lessor, to guarantee all obligations and covenants of the Assignee under this Assignment and under the Lease; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to accept an assignment from Assignor of all of Assignor's right, leasehold title and interest under the Lease and to the Equipment subject to the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of Assignor and Assignee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Definitions. For all purposes of this Assignment, unless otherwise expressly provided herein, all initially capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Lease.

2. Effective Date. The Effective Date of this Assignment shall be the later of (1) the latest of the dates set forth opposite the signature lines of the Assignor, Assignee, Lessor and Agent and (2) receipt by the Lessor of an opinion of counsel for the Assignee pursuant to Section 6 hereof; provided, however, that this Assignment may be terminated after the Effective Date pursuant to the provisions of Section 19 hereof.

3. Assignment. As of the Effective Date, Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest under the Lease and to the Equipment, subject to the terms and conditions set forth in Sections 2, 4, 13 and 19 hereof.

This Assignment shall be effective only as to the equipment described on Exhibit A hereto.

4. Assumption. Assignee hereby accepts the assignment set forth above and assumes all of the obligations of Lessee under the Lease with respect to the Equipment arising after the Effective Date and agrees to perform and comply with all of the obligations, covenants and conditions of Lessee under the Lease other than obligations or representations of said Lessee referring to a particular point in time prior to the Effective Date.

Assignee shall be responsible for the payment of rent due under the Lease and the performance and compliance with all other terms and conditions of the Lease required to be performed by Lessee under the Lease beginning as of the Effective Date of this Assignment. Assignee expressly does not assume any liabilities or obligations arising under or which have accrued in whole or in part pursuant to the terms of the Lease prior to the Effective Date; provided, however,

that the Assignee shall be responsible for that portion of any liability or obligation which shall have accrued in part after the Effective Date; and provided further, however, that the Assignee shall be responsible for only those liabilities or obligations arising from use of the Equipment outside the United States which result solely and directly from use of the Equipment after the Effective Date.

Subject to the provisions of the next succeeding sentence and Section 19 hereof, as of the Effective Date, Assignor will be released from its obligations under the Lease. Anything to the contrary in this Assignment notwithstanding, any liabilities or obligations of any kind whatsoever arising from the Lease (including, but not limited to, liability for loss of tax benefits pursuant to Section 21 thereof) which are not assumed by the Assignee remain the responsibility of the Assignor and are expressly not released pursuant to this Assignment.

5. Related Documents. The Assignee acknowledges that the Lease, as modified by this Assignment, and the Equipment are subject to the terms and conditions of (1) a Finance Agreement, dated as of March 15, 1978 between Girard Trust Bank (formerly Girard Bank), as Agent (the "Agent") and The Paul Revere Life Insurance Company (the "Investor"),

(2) the Conditional Sale Agreement, (3) the Assignment, (4) the Lease Assignment dated as of March 15, 1978 from the Lessor to the Agent, and (5) that certain "Letter of Agreement re March 15, 1978 Finance Agreement" dated as of March 31, 1980 among the Lessor, the Investor, and the Agent (these five documents, together with the Lease being hereinafter referred to collectively as the "Operative Documents").

6. Markings and Filings. Assignee agrees to restencil and renumber the Equipment at Assignee's expense to eliminate the reporting marks of Assignor and/or Chicago, Rock Island and Pacific Railroad Company as soon as reasonably possible after the Effective Date. Assignee further agrees to preserve the markings of the Lessor and the Agent required pursuant to the Conditional Sale Agreement and the Lease.

Assignee agrees to make, at Assignee's expense, such filings, deposits, and publications as may be required under the Operative Documents and under any encumbrance on the Lease or the Equipment created by or pursuant to the Operative Documents, so as to preserve all security interests created by or pursuant to the Operative Documents and to reflect this Assignment and the renumbering of the Equipment. Such filings, deposits, and publications shall be made on or



prior to the Effective Date. Assignee shall, within twenty (20) days after such filings, provide to the Lessor and the Agent copies of the filed, deposited, or published documents.

The Assignee agrees to provide the Lessor and the Agent an opinion of counsel for the assignee, dated as of the Effective Date, in form and substance satisfactory to it and to Messrs. Donovan Leisure Newton & Irvine, special counsel to the Lessor, to the effect that the terms and conditions of Section 17M hereof have been complied with and that all statements and facts represented and warranted by the Assignee in such Section 17M are true and accurate to the best knowledge of such counsel as of the date of such opinion.

7. Modification of Lease. As of the Effective Date, the Lease is modified in accordance with Exhibit C hereto, subject to the Lessor's and Agent's consent and subject to the provisions of Section 19 hereof.

8. Third Party Beneficiary. The parties hereby acknowledge that both the Lessor and the Guarantor are third party beneficiaries of this Assignment.

9. Change in Assignment. This Assignment may not be modified, amended or changed in any way without the express written consent of the Lessor.

10. Payments and Prorations. Assignee agrees to pay, in addition to and totally separate from, rental payments

due pursuant to Section 3 of the Lease, periodic payments to the Guarantor and the Assignor in accordance with Exhibit A hereto at such times as rental payments are due under the Lease beginning, with respect to each Unit of Equipment, on the first rental payment date occurring after both the Effective Date and the first date such Unit is both under the control of the Assignee and in Satisfactory Condition, and ending, with respect to each Unit of Equipment, on the earlier of the date on which the last rental payment due under the Lease is paid (excluding the term of any exercised renewal options) or the date on which the Casualty Value with respect to such Unit of Equipment is paid. The first periodic payments to the Assignor, and the Guarantor (and any accrued or prepaid items or obligations) shall be prorated on a per diem and per Unit basis from the first date after the Effective Date upon which each Unit is both under the control of the Assignee and in Satisfactory Condition to the next periodic rental payment date under the Lease immediately following such date.

The Guarantor shall calculate the foregoing payments and shall invoice Assignee and Assignor. Assignee and Assignor agree to pay the prepaid or accrued items and obligations within 10 days after receipt of invoice.

The Assignor agrees to make all rental payments due under the Lease prior to the Effective Date.

11. Petitions. Assignee agrees to make, and Assignor agrees to cooperate with respect to, all filings with the Interstate Commerce Commission and all deposits with the Registrar General of Canada, which are necessary to protect the security interests of the Lessor and the Agent in the Lease and the Equipment, and Assignor agrees to make, with Assignee's cooperation, any petition to the Reorganization Court which is necessary pursuant to this Assignment.

12. Equipment Compensation and Use. The Assignor shall be entitled to all compensation with respect to the Equipment and its use prior to the Effective Date, and Assignee shall be entitled to all such compensation and use thereafter. Assignor and Assignee agree that they shall respectively bear the risks and rewards of the Equipment and the Lease arising before and after the Effective Date. Nothing in this Section 12 shall affect the respective obligations of the Assignor and the Assignee under the Lease.

13. Possession, Inspection and Repair. Possession of the Equipment shall be delivered to Assignee as soon after the Effective Date as is reasonably possible or at any time prior thereto upon mutual agreement of all parties hereto.

Assignor's performance under this Section may be delayed by reasons beyond Assignor's reasonable control including without limitation, possession of Units by others.

The Equipment shall be delivered to Assignee, at the points of interchange with Assignee's lines which are nearest the then current locations of the Equipment, whether the Equipment is then currently on the lines of Assignee or on other lines. Assignee shall pay all costs of movement of the Units from their current locations to the points of interchange with Assignee's lines. Assignee shall inform the Guarantor and the Assignor of the delivery times and locations of the Units. The Assignee and the Assignor, or an agent of Assignor, shall jointly inspect the Equipment. If any Unit is not found to be in condition acceptable under FRA safety standards and for AAR unrestricted interchange in good operating condition, ordinary wear and tear excepted ("Satisfactory Condition"), at the option of the Assignee, designated by notice in writing to Assignor and Guarantor within 10 days after such inspection, the Assignee shall select one of the following alternatives:

- (a) If a Casualty Occurrence as defined in the Lease has occurred such Unit shall be excluded from the provisions of Section 3 hereof and Assignor shall pay the Casualty Value for such Unit as specified in the Lease; or

- (b) Such unit shall be repaired at the Assignee's expense by the Guarantor at the Guarantor's usual rate of charges which is subject to change without notice; or
- (c) Such Unit shall be repaired at the Assignee's expense at a repair facility designated by the Guarantor at such facility's usual rate of charges; or
- (d) Such Unit shall be repaired at the Assignee's expense at a repair facility operated by Assignee at such facility's usual rate of charges, such repairs to be done on a timely basis not to take longer than similar repairs done on cars owned by the Assignee.

The repair described in (b), (c) or (d) above shall be limited to the repair of any damage or condition discovered at the inspection and which renders, in the reasonable opinion of the inspectors, the Unit not in Satisfactory Condition.

Assignee shall pay the cost of repair pursuant to (b), (c) or (d) above, but may deduct from the Periodic Payments to the Assignor as shown in Exhibit A the cost of repair plus interest on the portion of such costs unreimbursed, from time to time, at the rate of 12 percent (12%) per annum.

If notice in writing with respect to the inspection is not received by the Guarantor within ten (10) days after delivery of each Unit of Equipment or if the Assignee does not participate in the inspection described above, any obligation to pay the Casualty Value for such Unit of Equipment pursuant to the Lease shall become the responsibility of the Assignee, and to the extent that the Assignee assumes

all of Assignor's obligations under this Section 13 with respect to such Unit of Equipment, such obligations of the Assignor shall thereupon become null and void and of no further effect.

The Assignor's inspection may be made by an inspector of Assignor which inspector may be selected by the Guarantor.

14. Set-offs for Late Delivery and Repair. To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit for a period when such Unit is not both delivered to the Assignee and in Satisfactory Condition, the Assignee may set-off such rental payment, including interest on the portion of such amount as remains unreimbursed, from time to time, at the rate of 12 percent (12%) per annum, against the Periodic Payments to both the Assignor and the Guarantor, as shown in Exhibit A hereto.

To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit which is not in Satisfactory Condition prior to completion of repair thereof or incurs charges for repairs to a Unit pursuant to Section 13(d) hereof, the Assignee may set-off such payments or charges against the Periodic Payments to the Assignor as shown in Exhibit A hereto, such set-off to be junior in priority to and paid after any set-off allowed pursuant to the first paragraph of this Section 14.

To the extent that any amounts owed to the Lessor by the Assignor under the Lease remain due, the Assignee shall set-off such amounts against the Periodic Payments to the Assignor as shown in Exhibit A hereto and pay such amounts directly to the Lessor, such set-off to be junior in priority to and paid after any set-offs allowed pursuant to the first two paragraphs of this Section 14.

15. Fees and Expenses. Assignee shall pay on demand inspector's fees and movement expenses relating to delivery of the Equipment, costs of restenciling and cost of publication under restenciled numbers in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

16. Limitations on Set-Off. The Assignee is hereby informed of the interests of the Lessor in the rental payments due under the Lease and the interests of the Assignor and the Guarantor in the periodic payments due hereunder as described in Exhibit A hereto, and that the agreements contained in this Section are a material consideration for the Assignment. Notwithstanding any other obligations of the Assignor to the Assignee, or any claim which the Assignee may now have or acquire in the future against the Assignor, Assignee agrees that all payments hereunder shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever except as permitted under Sections 11 and 12 hereof. Any and all such obligations,

if any, howsoever arising, shall be and remain enforceable by Assignee against the Assignor and the Property of the Chicago, Rock Island and Pacific Railroad Company.

17. Warranties and Representations of the Assignee.

The Assignee warrants and represents to each of the other parties hereto as follows:

A. This Assignment has been duly authorized, executed and delivered by the Assignee and constitutes a valid, legal and binding obligation of the Assignee, enforceable in accordance with its terms;

B. Neither the execution and delivery of this Assignment nor the consummation of the transaction herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Assignee will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Assignee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;



C. The Assignee shall not operate or otherwise utilize the Units in any and all jurisdictions for which any approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary or in which the Assignee shall become subject to such jurisdiction or regulation, until the Assignee shall have either (i) obtained such approvals, orders or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Unit or Units in any and all such jurisdictions, except for claims, liabilities penalties or damages arising from acts or omissions of the Lessor;

D. The Assignee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has the corporate power and authority and legal right to carry on its business as now conducted and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect

its ability to perform its obligations under the Operative Documents or the interests of any other party hereto;

E. There is no proceeding pending, or to the knowledge of the Lessee threatened against or affecting the Lessee or any of its property in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Assignee, or the ability of the Assignee to perform its obligations under this Assignment, except as set forth in the Memorandum for Private Investors dated May 1, 1980 as supplemented on June 26, 1980 and August 18, 1980 (the "Memorandum"), furnished to the parties hereto. The Assignee is not in default with respect to any judgment, award or order of any court, governmental authority or arbitration board or tribunal, except as set forth in the Memorandum. Since June 30, 1980, there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Assignee, except as set forth in the Memorandum.

F. Except as set forth in the Memorandum, all tax returns required to be filed by the Assignee in any jurisdiction have in fact been filed, and all taxes, assessments, fees

and other governmental charges upon the Assignee, or upon any of its properties, income or franchises, which are due and payable by the Assignee have been paid or are being contested in good faith in an appropriate manner and the provisions for taxes on the books of the Assignee are adequate. The Assignee does not know of any proposed or potential additional material tax assessment or basis for such assessment against it.

G. The Assignee has furnished to the Vendee, the Lessor and the Investor the consolidated balance sheets of the Assignee for the periods ending June 30, 1980 and December 31, 1979, and the related consolidated statements of income and retained earnings for the periods then ended, certified, in the case of the year-end statements, by Coopers & Lybrand, independent certified public accountants, and, in the case of the June 30, 1980 statements, by the Chief Financial Officer of the Assignee; such consolidated financial statements are in accordance with the books and records of the Assignee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby; and such statements present fairly the financial condition of the Assignee at such dates and the results of its operations for such periods.

H. As of the Effective Date, the Assignee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Units, except only for the rights of the Assignee and the Assignor under this Assignment and the Lease.

I. As of the Effective Date, the Units are free from all claims, liens, security interests and other encumbrances arising at any time on or after the Assignee has accepted delivery of such Units pursuant to Section 13 of this Assignment other than those created by the Operative Documents, the rights of the Assignor and Assignee under this Lease, and other than those resulting from claims against the Lessor not related to the ownership of the Units.

J. The Assignee is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business, which violation or failure to obtain might materially and adversely affect its ability (financial or other) to perform its obligations under this Assignment and the Lease.

K. Except as set forth in the Memorandum the Assignee has good title to or valid leasehold estates in all the property it purports to own or lease (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet referred to in Section 17G (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

L. The financial statements referred to in Section 17G do not, nor do the Memorandum or any other written statement furnished by the Assignee in connection with the transactions contemplated thereby, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein not misleading.

M. This Assignment has been duly filed pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway General of Canada and such filing pursuant to 49 U.S.C. § 11303 protects the Lessor's rights in and to the Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state

or local government or agency thereof is necessary in order to protect the rights of the Agent or the Lessor under this Assignment or the Lease in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor under the Lease in Canada or any province thereof.

N. The Assignee is not in default in the payment of the principal of or interest on any indebtedness for borrowed money.

O. The Assignee represents that it is not entering into this Assignment, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, the Investor, the Builder or the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

In the event that any representation herein set forth which is qualified by a reference to the knowledge of the Assignee shall prove inaccurate in any material respect, the Assignee shall promptly use its best efforts to remedy or cure such condition to the extent necessary to restore

the accuracy of such representation, and shall indemnify and hold harmless the Owner, the Lessor, the Agent and the Investor from all liabilities, damages or costs arising out of such inaccuracy.

18. Warranties and Representations of the Lessor.

The Lessor warrants and represents to each of the other parties hereto as follows:

A. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and has the corporate power, authority and legal right to carry on its business as now conducted and is duly authorized to execute and deliver the documents required of it under this agreement (Documents) and to fulfill and comply with the terms, conditions and provisions of those documents and the Operative Documents.

B. Its Documents and Operative Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding agreements of the Lessor, enforceable against the Lessor in accordance with their terms.

C. The execution, delivery and compliance by the Lessor with the provisions of its Documents and Operative

Documents do not and will not conflict with, result in a breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessor under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Lessor is a party or by which it or any of its property may be bound.

(D) It has made and continued its investment pursuant to the Operative Documents with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan) within the meaning of ERISA.

19. Termination and Reversion. If, within 40 days after the Effective Date, an order has not been entered by the Court in the Reorganization Proceedings (i) approving this Assignment, and (ii) confirming that this Assignment vests in Assignee all of Assignor's right, title and interest in the Lease with respect to the Equipment, then, at the request of the Lessor or the Assignee, the release of the Assignor's obligations under the Lease and the Assignee's assumption of rights and obligations under the Lease shall be terminated. In the event of a termination pursuant to the next preceding sentence: (i) Assignee shall reassign the



Lease to the Assignor, and Assignor shall reassume the obligations under the Lease as of the date of the request of the Lessor or the Assignee, (ii) the Assignee shall deliver all Units which are on Assignee's lines or under Assignee's control to Assignor's nearest interchange point as soon as reasonably possible, (iii) the Assignor shall be responsible to pay to the Assignee, as a cost of administration, an amount equal to the difference of (a) the sum of the amount paid by the Assignee as a rental payment under the Lease, and the costs of all repairs to the Units performed by the Assignee pursuant to this Assignment, less (b) the sum of daily rental charges at a rate of \$10 per Unit per day for each Unit in Satisfactory Condition and under the Assignee's control from and including the first day (after the Effective Date) upon which the Assignee had control of such Unit in Satisfactory Condition to and including the day the Assignee delivers such Unit to an interchange point of the Assignor, (iv) the obligation of the Assignee to make periodic payments to the Guarantor and the Assignor pursuant to Section 10 hereto shall terminate, and (v) the modifications to the Lease specified in Section 7 and Exhibit C hereto, shall be of no further force or effect, and the Lease shall thereafter read as if such modifications had not been made.

In the event of a termination pursuant to this Section 19, the Assignee shall continue to be responsible

to the Lessor, as to each Unit, for any liabilities or obligations which became due pursuant to Sections 6 or 7 of the Lease during the period from and including the date each Unit was delivered to an interchange point of the Assignee to and including the date such Unit is delivered by the Assignee to an interchange point of the Assignor.

20. Section Headings. The headings of sections contained in this Assignment are inserted for convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

21. Execution. This Assignment may be executed in counterparts, each of which so executed shall be deemed to be an original, provided that all such counterparts, taken together, shall constitute but one and the same agreement.

22. Entireties. This Assignment, together with the Guarantee, sets forth the entire agreement among the parties hereto with respect to the subject matter hereof.

23. Governing Law. This Assignment shall in all respects be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Assignor and Assignee have

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## CONSENT AND LEASE MODIFICATION

Each of the undersigned hereby consents to the Conrail Assignment and Assumption of Lease (the "Conrail Assignment") of which this Consent forms a part and agrees that, pursuant to the provisions of the Conrail Assignment, and as of the Effective Date, the Assignor thereunder is, subject to the limitations set forth in the Conrail Assignment, released of all of Assignor's obligations under the Lease arising after the Effective Date of the Conrail Assignment but is not released of liabilities arising in whole or in part pursuant to the terms of the Lease prior to the Effective Date.

Each of the undersigned hereby acknowledges that:

- (1) It has received a copy of the Conrail Assignment;
- (2) Attached to the Conrail Assignment as Exhibit B is a true copy of the Lease as amended to date;
- (3) As of the Effective Date, the Assignee is substituted as the Lessee under the Lease, on the terms set forth in the Conrail Assignment;

- (4) With respect to the obligations under the Lease arising prior to the Effective Date of the Conrail Assignment, the undersigned shall have recourse only against the Assignor or parties other than the Assignee for either damages or the correction of any default pursuant to the Lease arising prior to, or as a result of events occurring prior to, the Effective Date of the Conrail Assignment and hereby waive all rights to terminate the Lease which may arise solely as a result of the Conrail Assignment, all on the terms set forth in the Conrail Assignment;
- (5) The Assignee shall be permitted to change the identification numbers and reporting marks on the Equipment provided that (1) the Assignee promptly notifies the undersigned of any such change and preserves the markings on, and registration of, the Equipment disclosing and preserving the security interest of third parties as presently disclosed and (2) the Assignee makes such filings and deposits as are required to fulfill its representations and warranties pursuant to Section 17M of the Conrail Assignment;

- (6) Subject to Section 19 of the Conrail Assignment the Lease is hereby modified in accordance with Section 7 of the Conrail Assignment and the undersigned hereby consent to such modification; and
- (7) The Conditional Sale Agreement is hereby amended to permit the possession and use by Assignee of the Units listed in Exhibit A to the Conrail Assignment, pursuant to the Lease as amended. So long as the Assignee is not in default under the Lease, as amended, the secured party under the Conditional Sale Agreement shall not interfere with the Assignee's right of quiet enjoyment with respect to the Equipment.

IN WITNESS WHEREOF, the undersigned have caused this consent to be executed and sealed by their duly authorized officers on \_\_\_\_\_, 1980.

LESSOR:

UNILEASE NO. 24, INC.

By \_\_\_\_\_  
Vice President

(SEAL)

ATTEST:

\_\_\_\_\_  
Assistant Secretary

GIRARD BANK, AS AGENT

(SEAL)

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared William M. Gibbons, to me personally known, who, being by me duly sworn, says that he is the Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, signer and sealer of the foregoing instrument, and he acknowledged same to be his free act and deed, as Trustee, before me.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this 26th day of September, 1980, before me personally appeared J.W. Butler, to me personally known, who, being by me duly sworn, says that he is the Vice President of Consolidated Rail Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Catherine Aldinger  
Notary Public

[Notarial Seal]

CATHERINE ALDINGER  
Notary Public, Phila., Phila. Co.  
My Commission Expires Aug. 3, 1981

My Commission expires: \_\_\_\_\_



STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to  
me personally known, who, being by me duly sworn, says  
that he is the Vice President of Unilease No. 24, Inc.,  
that one of the seals affixed to the foregoing instrument  
is the corporate seal of said corporation, that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the  
free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is the Vice President of Girard Bank, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the  
foregoing instrument was the free act and deed of said  
corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

EXHIBIT ATO ASSIGNMENT AND ASSUMPTION OF LEASE

<u>UNIT DESIGNATION</u>	<u>NUMBER OF UNITS</u>	<u>RENTAL PAYMENT TO LESSOR PER UNIT</u>	<u>PERIODIC PAYMENT TO ASSIGNOR PER UNIT*</u>	<u>PERIODIC PAYMENT TO GUARANTOR PER UNIT*</u>
2494 C.F. Gondola Cars 52' - 100 ton (Rock Island Road Numbers 400100-400199, inclusive)	100	\$771.56	\$32.11	\$96.33
(Conrail Road Numbers <u>CR584000 - CR584099</u> Inclusive)				

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- \* The Periodic Payments to the Assignor and the Guarantor shall be payable as directed by the Assignor and the Guarantor respectively.

EXHIBIT C

The Lease is modified as noted below.

- (a) The Lease is modified to substitute, as of the Effective Date, Assignee as "Lessee" with respect to the Equipment.
- (b) In Section 4, the first paragraph is amended by deleting beginning with the words "and (b) the date" in the fifth line of said paragraph through and including the words "Debtor for such rental" in the nineteenth line of said paragraph, and by deleting the words "the earlier of(a)" in the fifth line of said paragraph.
- (c) Section 7, lines 2-6 are deleted and the following substituted therefore:

"of Loss. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, such taking or requisitioning resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this lease (such occurrences being hereinafter called Casualty Occurrences),"

- (d) Section 8 is amended to read in its entirety as follows:

Section 8. Annual Reports. On or before April 30 in each year, but not under any circumstance later than May 30 of each year, commencing April 30, 1981, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the Effective Date of the Assignment and Assumption of Lease in the case of the first such statement) after said Effective Date and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request; (b) an accurate statement stating that, in the case of all Units repainted and repaired

during the period covered by such statement, the numbers and the markings required by paragraph 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced; (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles consistently applied and audited and certified by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor and Agent; (d) a certificate of an officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease."

- (e) Section 10, paragraphs (E) and (F) are deleted and replaced by the following:

"(E) a petition for reorganization under Section 1161 et seq of the Bankruptcy Code (as now constituted or as hereafter amended, including any successor provision thereto) or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168, or any successor provision, as the same may hereafter be amended; or

"(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been continued in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168 or any successor provision, as the same may hereafter be amended, or pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier."

- (f) Section 10 is further amended by adding the following paragraphs to the end of said section:

The Lessor shall forbear exercising its remedies hereunder arising out of an Event of Default pursuant to this Section 10 if, and so long as, (1) within 10 days of such Event of Default North American Car Corporation, as Guarantor (the "Guarantor") under a Guarantee Agreement entered

into as of July 31, 1980 with the Lessor (the "Guarantee"), shall have paid in full any unpaid monetary obligations due under this Lease, and (2) within thirty (30) days the Guarantor shall have cured any other Event of Default under this Lease. The Guarantor shall not be required to cure any Event of Default under this Lease the cure of which would require information or knowledge which the Guarantor cannot obtain with reasonable diligence and at reasonable expense. At any time after the Guarantor shall have made any payment under (1) above or cured any other default pursuant to (2) above or if there shall be an Event of Default hereunder caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of proceedings of the type described in item (F) of this Section 10, the Guarantor, at its option, may assume all the obligations of the Lessee provided that the following conditions have been met:

- (i) The Guarantor certifies to the Lessor that it is not then in default in respect of any obligations for the payment of principle or interest in respect of borrowed money, any conditional sale indebtedness or any equipment trust obligation;
- (ii) The Guarantor certifies to the Lessor that upon such assumption the Guarantor will not be in default under this Lease, which certification shall be accompanied by an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the same effect;
- (iii) The Guarantor directly assumes all the obligations of the Lessee under this Lease pursuant to an Assumption Agreement in form and substance satisfactory to the Lessor (the approval of which by such party shall not be unreasonably withheld), which

Assumption Agreement will, at the option of the Guarantor and without any approval of the Lessor, provide that those Sections of this Lease listed in Exhibit A to the Guarantee Agreement described above will be amended on and as of the effective date of such Assumption Agreement to read as provided in said Exhibit A; and

- (iv) The Guarantor delivers to the Lessor an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the effect that such Assumption Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms (except to the extent limited by any bankruptcy or other similar laws) and shall have caused such Assumption Agreement to be filed and recorded in accordance with the provisions of Section 16 hereof.

The Lessor agrees to execute and deliver the above mentioned Assumption Agreement within 10 days after tender thereof, provided that it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it and that all other procedures referred to above have been complied with. The Lessee agrees that, upon execution and delivery of such Assumption Agreement by the Lessor and the Guarantor, all rights of the Lessee to the use of the Units shall absolutely cease and terminate, but the Lessee shall remain liable as herein provided and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Lessor; it being understood and agreed however, that the obligations of the Guarantor under such Assumption Agreement,

this Lease and the Guarantee shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

Compliance by the Guarantor with the procedures necessary for assumption as noted above in this Section 10 and the execution and delivery of the above mentioned Assumption Agreement by both the Guarantor and the Lessor shall for the purposes of this Lease constitute a cure of any Event of Default caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of any proceedings of the type described in item (F) of this Section 10.

The Lessor agrees to notify the Guarantor promptly in writing upon its becoming aware of any condition or event which constitutes an Event of Default hereunder, but any failure to do so shall not affect in any way the rights and remedies of the Lessor under this Lease and the Guarantee.

- (g) Section 11, paragraph 2 is amended by deleting the period at the end of such paragraph and adding at the end of the paragraph the following:

"provided however, that such storage shall not exceed 180 days (such 180 day period to be referred to as the 'Storage Period')."

- (h) Section 11, paragraph 3 is amended by deleting the period at the end of the paragraph and adding the following:

"provided however, that such storage shall not exceed the Storage Period."

- (i) Section 11, paragraph 4, lines 1-3 are deleted and the following substituted therefor:

"The assembling, delivery, storage and transportation of the Units during the Storage Period as herein provided shall be at the cost, expense and risk of the Lessee. During the Storage Period"



- (j) Section 12, paragraph 4 is deleted and the following paragraphs inserted in lieu thereof:

"So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights over which railroad equipment of the Lessee, or any such affiliate, is regularly operated pursuant to contract, and also to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of the Lease and the Conditional Sale Agreement; provided however, that the Lessee shall not use or permit the use of any Unit in service involving the operation and maintenance thereof outside the United States of America, except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America.

"The Lessee agrees that at all times during the terms of this Lease, the Units will be used as rolling stock within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38 property" within the meaning of the Code."

- (k) In Section 14, all references to "early termination" pursuant to clause (b) of Section 4 are deleted.
- (l) All references to "Lessee" in Section 15, are amended to refer to the "Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company", except in paragraphs D, E., and K, and the following is added to the end of paragraph J:

"This Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment have also been duly filed and recorded with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada."

- (m) Section 16, paragraph 1 is amended by deleting the period at the end of the first sentence and then substituting the following in lieu thereof:

"and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada."

- (n) Section 18(b) of the Lease is amended in its entirety to read as follows:

"If to the Lessee, to

Conrail Corporation  
1138 Six Penn Central Plaza  
Philadelphia, Pennsylvania 19104  
Attn: Legal Department"

- (o) Section 20 is amended in its entirety to read as follows:

"The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor as an additional named insured or loss payee, as its interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event),

shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1981, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to a Unit and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respects of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this paragraph 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing."

- (p) Section 21 is amended by adding the following paragraph to the end of said Section:

"Anything to the contrary in this Section 21 notwithstanding, Consolidated Rail Corporation ("Conrail") as assignee of the Trustee of the Property of the Chicago Rock Island and Pacific Railroad Company, hereby agrees to indemnify Lessor only for loss of tax benefits arising out of Conrail's acts or omissions.

- (q) Schedule A is amended by deleting the entry in the column headed "Lessee's Road Numbers" and by replacing such entry with the following: "Conrail Numbers CR584099 - CR584080 - CR584079 ."

RECORDATION NO. 12259 Filed 1425

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INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION of lease (the "Assignment") dated as of this first day of August, 1980 by and between William M. Gibbons, as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Assignor") and Consolidated Rail Corporation (the "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is the lessee of certain units of railroad equipment described in Exhibit A attached hereto and made a part hereof (the "Equipment" or the "Units" or individually a "Unit") pursuant to the Lease of such Equipment dated as of March 15, 1978 between the Assignor and Unilease No. 24, Inc. (the "Lessor"), as amended to date and attached hereto as Exhibit B (the "Lease");

WHEREAS, to induce the Lessor to consent to this assignment, North American Car Corporation (the "Guarantor") has agreed, pursuant to a Guarantee Agreement (the "Guarantee") dated as of July 31, 1980 with the Lessor, to guarantee all obligations and covenants of the Assignee under this Assignment and under the Lease; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to accept an assignment from Assignor of all of Assignor's right, leasehold title and interest under the Lease and to the Equipment subject to the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of Assignor and Assignee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Definitions. For all purposes of this Assignment, unless otherwise expressly provided herein, all initially capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Lease.

2. Effective Date. The Effective Date of this Assignment shall be the later of (1) the latest of the dates set forth opposite the signature lines of the Assignor, Assignee, Lessor and Agent and (2) receipt by the Lessor of an opinion of counsel for the Assignee pursuant to Section 6 hereof; provided, however, that this Assignment may be terminated after the Effective Date pursuant to the provisions of Section 19 hereof.

3. Assignment. As of the Effective Date, Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest under the Lease and to the Equipment, subject to the terms and conditions set forth in Sections 2, 4, 13 and 19 hereof.

This Assignment shall be effective only as to the equipment described on Exhibit A hereto.

4. Assumption. Assignee hereby accepts the assignment set forth above and assumes all of the obligations of Lessee under the Lease with respect to the Equipment arising after the Effective Date and agrees to perform and comply with all of the obligations, covenants and conditions of Lessee under the Lease other than obligations or representations of said Lessee referring to a particular point in time prior to the Effective Date.

Assignee shall be responsible for the payment of rent due under the Lease and the performance and compliance with all other terms and conditions of the Lease required to be performed by Lessee under the Lease beginning as of the Effective Date of this Assignment. Assignee expressly does not assume any liabilities or obligations arising under or which have accrued in whole or in part pursuant to the terms of the Lease prior to the Effective Date; provided, however,

that the Assignee shall be responsible for that portion of any liability or obligation which shall have accrued in part after the Effective Date; and provided further, however, that the Assignee shall be responsible for only those liabilities or obligations arising from use of the Equipment outside the United States which result solely and directly from use of the Equipment after the Effective Date.

Subject to the provisions of the next succeeding sentence and Section 19 hereof, as of the Effective Date, Assignor will be released from its obligations under the Lease. Anything to the contrary in this Assignment notwithstanding, any liabilities or obligations of any kind whatsoever arising from the Lease (including, but not limited to, liability for loss of tax benefits pursuant to Section 21 thereof) which are not assumed by the Assignee remain the responsibility of the Assignor and are expressly not released pursuant to this Assignment.

5. Related Documents. The Assignee acknowledges that the Lease, as modified by this Assignment, and the Equipment are subject to the terms and conditions of (1) a Finance Agreement, dated as of March 15, 1978 between Girard Trust Bank (formerly Girard Bank), as Agent (the "Agent") and The Paul Revere Life Insurance Company (the "Investor"),



(2) the Conditional Sale Agreement, (3) the Assignment, (4) the Lease Assignment dated as of March 15, 1978 from the Lessor to the Agent, and (5) that certain "Letter of Agreement re March 15, 1978 Finance Agreement" dated as of March 31, 1980 among the Lessor, the Investor, and the Agent (these five documents, together with the Lease being hereinafter referred to collectively as the "Operative Documents").

6. Markings and Filings. Assignee agrees to restencil and renumber the Equipment at Assignee's expense to eliminate the reporting marks of Assignor and/or Chicago, Rock Island and Pacific Railroad Company as soon as reasonably possible after the Effective Date. Assignee further agrees to preserve the markings of the Lessor and the Agent required pursuant to the Conditional Sale Agreement and the Lease.

Assignee agrees to make, at Assignee's expense, such filings, deposits, and publications as may be required under the Operative Documents and under any encumbrance on the Lease or the Equipment created by or pursuant to the Operative Documents, so as to preserve all security interests created by or pursuant to the Operative Documents and to reflect this Assignment and the renumbering of the Equipment. Such filings, deposits, and publications shall be made on or

prior to the Effective Date. Assignee shall, within twenty (20) days after such filings, provide to the Lessor and the Agent copies of the filed, deposited, or published documents.

The Assignee agrees to provide the Lessor and the Agent an opinion of counsel for the assignee, dated as of the Effective Date, in form and substance satisfactory to it and to Messrs. Donovan Leisure Newton & Irvine, special counsel to the Lessor, to the effect that the terms and conditions of Section 17M hereof have been complied with and that all statements and facts represented and warranted by the Assignee in such Section 17M are true and accurate to the best knowledge of such counsel as of the date of such opinion.

7. Modification of Lease. As of the Effective Date, the Lease is modified in accordance with Exhibit C hereto, subject to the Lessor's and Agent's consent and subject to the provisions of Section 19 hereof.

8. Third Party Beneficiary. The parties hereby acknowledge that both the Lessor and the Guarantor are third party beneficiaries of this Assignment.

9. Change in Assignment. This Assignment may not be modified, amended or changed in any way without the express written consent of the Lessor.

10. Payments and Prorations. Assignee agrees to pay, in addition to and totally separate from, rental payments

due pursuant to Section 3 of the Lease, periodic payments to the Guarantor and the Assignor in accordance with Exhibit A hereto at such times as rental payments are due under the Lease beginning, with respect to each Unit of Equipment, on the first rental payment date occurring after both the Effective Date and the first date such Unit is both under the control of the Assignee and in Satisfactory Condition, and ending, with respect to each Unit of Equipment, on the earlier of the date on which the last rental payment due under the Lease is paid (excluding the term of any exercised renewal options) or the date on which the Casualty Value with respect to such Unit of Equipment is paid. The first periodic payments to the Assignor, and the Guarantor (and any accrued or prepaid items or obligations) shall be prorated on a per diem and per Unit basis from the first date after the Effective Date upon which each Unit is both under the control of the Assignee and in Satisfactory Condition to the next periodic rental payment date under the Lease immediately following such date.

The Guarantor shall calculate the foregoing payments and shall invoice Assignee, ~~and Assignor~~. Assignee ~~and Assignor~~ agree to pay the prepaid or accrued items and obligations within 10 days after receipt of invoice.

The Assignor agrees to make all rental payments due under the Lease prior to the Effective Date.

11. Petitions. Assignee agrees to make, and Assignor agrees to cooperate with respect to, all filings with the Interstate Commerce Commission and all deposits with the Registrar General of Canada, which are necessary to protect the security interests of the Lessor and the Agent in the Lease and the Equipment, and Assignor agrees to make, with Assignee's cooperation, any petition to the Reorganization Court which is necessary pursuant to this Assignment.

12. Equipment Compensation and Use. The Assignor shall be entitled to all compensation with respect to the Equipment and its use prior to the Effective Date, and Assignee shall be entitled to all such compensation and use thereafter. Assignor and Assignee agree that they shall respectively bear the risks and rewards of the Equipment and the Lease arising before and after the Effective Date. Nothing in this Section 12 shall affect the respective obligations of the Assignor and the Assignee under the Lease.

13. Possession, Inspection and Repair. Possession of the Equipment shall be delivered to Assignee as soon after the Effective Date as is reasonably possible or at any time prior thereto upon mutual agreement of all parties hereto.

Assignor's performance under this Section may be delayed by reasons beyond Assignor's reasonable control including without limitation, possession of Units by others.

The Equipment shall be delivered to Assignee, at the points of interchange with Assignee's lines which are nearest the then current locations of the Equipment, whether the Equipment is then currently on the lines of Assignee or on other lines. Assignee shall pay all costs of movement of the Units from their current locations to the points of interchange with Assignee's lines. Assignee shall inform the Guarantor and the Assignor of the delivery times and locations of the Units. The Assignee and the Assignor, or an agent of Assignor, shall jointly inspect the Equipment. If any Unit is not found to be in condition acceptable under FRA safety standards and for AAR unrestricted interchange in good operating condition, ordinary wear and tear excepted ("Satisfactory Condition"), at the option of the Assignee, designated by notice in writing to Assignor and Guarantor within 10 days after such inspection, the Assignee shall select one of the following alternatives:

- (a) If a Casualty Occurrence as defined in the Lease has occurred such Unit shall be excluded from the provisions of Section 3 hereof and Assignor shall pay the Casualty Value for such Unit as specified in the Lease; or

*W.M.B.*  
*J.C.D.* be held as a cost of administration to  
*AD*

- (b) Such unit shall be repaired at the Assignee's expense by the Guarantor at the Guarantor's usual rate of charges which is subject to change without notice; or
- (c) Such Unit shall be repaired at the Assignee's expense at a repair facility designated by the Guarantor at such facility's usual rate of charges; or
- (d) Such Unit shall be repaired at the Assignee's expense at a repair facility operated by Assignee at such facility's usual rate of charges, such repairs to be done on a timely basis not to take longer than similar repairs done on cars owned by the Assignee.

The repair described in (b), (c) or (d) above shall be limited to the repair of any damage or condition discovered at the inspection and which renders, in the reasonable opinion of the inspectors, the Unit not in Satisfactory Condition.

Assignee shall pay the cost of repair pursuant to (b), (c) or (d) above, but may deduct from the Periodic Payments to the Assignor as shown in Exhibit A the cost of repair plus interest on the portion of such costs unreimbursed, from time to time, at the rate of 12 percent (12%) per annum.

If notice in writing with respect to the inspection is not received by the Guarantor within ten (10) days after delivery of each Unit of Equipment or if the Assignee does not participate in the inspection described above, any obligation to pay the Casualty Value for such Unit of Equipment pursuant to the Lease shall become the responsibility of the Assignee, and to the extent that the Assignee assumes

all of Assignor's obligations under this Section 13 with respect to such Unit of Equipment, such obligations of the Assignor shall thereupon become null and void and of no further effect.

The Assignor's inspection may be made by an inspector of Assignor which inspector may be selected by the Guarantor.

14. Set-offs for Late Delivery and Repair. To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit for a period when such Unit is not both delivered to the Assignee and in Satisfactory Condition, the Assignee may set-off such rental payment, including interest on the portion of such amount as remains unreimbursed, from time to time, at the rate of 12 percent (12%) per annum, against the Periodic Payments to both the Assignor and the Guarantor, as shown in Exhibit A hereto.

To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit which is not in Satisfactory Condition prior to completion of repair thereof or incurs charges for repairs to a Unit pursuant to Section 13(d) hereof, the Assignee may set-off such payments or charges against the Periodic Payments to the Assignor as shown in Exhibit A hereto, such set-off to be junior in priority to and paid after any set-off allowed pursuant to the first paragraph of this Section 14.

To the extent that any amounts owed to the Lessor by the Assignor under the Lease remain due, the Assignee shall set-off such amounts against the Periodic Payments to the Assignor as shown in Exhibit A hereto and pay such amounts directly to the Lessor, such set-off to be junior in priority to and paid after any set-offs allowed pursuant to the first two paragraphs of this Section 14.

15. Fees and Expenses. Assignee shall pay on demand inspector's fees and movement expenses relating to delivery of the Equipment, costs of restenciling and cost of publication under restenciled numbers in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

16. Limitations on Set-Off. The Assignee is hereby informed of the interests of the Lessor in the rental payments due under the Lease and the interests of the Assignor and the Guarantor in the periodic payments due hereunder as described in Exhibit A hereto, and that the agreements contained in this Section are a material consideration for the Assignment. Notwithstanding any other obligations of the Assignor to the Assignee, or any claim which the Assignee may now have or acquire in the future against the Assignor, Assignee agrees that all payments hereunder shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever except as permitted under Sections 11 and 12 hereof. Any and all such obligations,



if any, howsoever arising, shall be and remain enforceable by Assignee against the Assignor and the Property of the Chicago, Rock Island and Pacific Railroad Company.

17. Warranties and Representations of the Assignee.

The Assignee warrants and represents to each of the other parties hereto as follows:

A. This Assignment has been duly authorized, executed and delivered by the Assignee and constitutes a valid, legal and binding obligation of the Assignee, enforceable in accordance with its terms;

B. Neither the execution and delivery of this Assignment nor the consummation of the transaction herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Assignee will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Assignee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

C. The Assignee shall not operate or otherwise utilize the Units in any and all jurisdictions for which any approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary or in which the Assignee shall become subject to such jurisdiction or regulation, until the Assignee shall have either (i) obtained such approvals, orders or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Unit or Units in any and all such jurisdictions, except for claims, liabilities penalties or damages arising from acts or omissions of the Lessor;

D. The Assignee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has the corporate power and authority and legal right to carry on its business as now conducted and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect

its ability to perform its obligations under the Operative Documents or the interests of any other party hereto;

E. There is no proceeding pending, or to the knowledge of the Lessee threatened against or affecting the Lessee or any of its property in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Assignee, or the ability of the Assignee to perform its obligations under this Assignment, except as set forth in the Memorandum for Private Investors dated May 1, 1980 as supplemented on June 26, 1980 and August 18, 1980 (the "Memorandum"), furnished to the parties hereto. The Assignee is not in default with respect to any judgment, award or order of any court, governmental authority or arbitration board or tribunal, except as set forth in the Memorandum. Since June 30, 1980, there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Assignee, except as set forth in the Memorandum.

F. Except as set forth in the Memorandum, all tax returns required to be filed by the Assignee in any jurisdiction have in fact been filed, and all taxes, assessments, fees

and other governmental charges upon the Assignee, or upon any of its properties, income or franchises, which are due and payable by the Assignee have been paid or are being contested in good faith in an appropriate manner and the provisions for taxes on the books of the Assignee are adequate. The Assignee does not know of any proposed or potential additional material tax assessment or basis for such assessment against it.

G. The Assignee has furnished to the Vendee, the Lessor and the Investor the consolidated balance sheets of the Assignee for the periods ending June 30, 1980 and December 31, 1979, and the related consolidated statements of income and retained earnings for the periods then ended, certified, in the case of the year-end statements, by Coopers & Lybrand, independent certified public accountants, and, in the case of the June 30, 1980 statements, by the Chief Financial Officer of the Assignee; such consolidated financial statements are in accordance with the books and records of the Assignee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby; and such statements present fairly the financial condition of the Assignee at such dates and the results of its operations for such periods.

H. As of the Effective Date, the Assignee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Units, except only for the rights of the Assignee and the Assignor under this Assignment and the Lease.

I. As of the Effective Date, the Units are free from all claims, liens, security interests and other encumbrances arising at any time on or after the Assignee has accepted delivery of such Units pursuant to Section 13 of this Assignment other than those created by the Operative Documents, the rights of the Assignor and Assignee under this Lease, and other than those resulting from claims against the Lessor not related to the ownership of the Units.

J. The Assignee is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business, which violation or failure to obtain might materially and adversely affect its ability (financial or other) to perform its obligations under this Assignment and the Lease.

K. Except as set forth in the Memorandum the Assignee has good title to or valid leasehold estates in all the property it purports to own or lease (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet referred to in Section 17G (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

L. The financial statements referred to in Section 17G do not, nor do the Memorandum or any other written statement furnished by the Assignee in connection with the transactions contemplated thereby, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein not misleading.

M. This Assignment has been duly filed pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway General of Canada and such filing pursuant to 49 U.S.C. § 11303 protects the Lessor's rights in and to the Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state

or local government or agency thereof is necessary in order to protect the rights of the Agent or the Lessor under this Assignment or the Lease in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor under the Lease in Canada or any province thereof.

N. The Assignee is not in default in the payment of the principal of or interest on any indebtedness for borrowed money.

O. The Assignee represents that it is not entering into this Assignment, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, the Investor, the Builder or the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

In the event that any representation herein set forth which is qualified by a reference to the knowledge of the Assignee shall prove inaccurate in any material respect, the Assignee shall promptly use its best efforts to remedy or cure such condition to the extent necessary to restore

the accuracy of such representation, and shall indemnify and hold harmless the Owner, the Lessor, the Agent and the Investor from all liabilities, damages or costs arising out of such inaccuracy.

18. Warranties and Representations of the Lessor.

The Lessor warrants and represents to each of the other parties hereto as follows:

A. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and has the corporate power, authority and legal right to carry on its business as now conducted and is duly authorized to execute and deliver the documents required of it under this agreement (Documents) and to fulfill and comply with the terms, conditions and provisions of those documents and the Operative Documents.

B. Its Documents and Operative Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding agreements of the Lessor, enforceable against the Lessor in accordance with their terms.

C. The execution, delivery and compliance by the Lessor with the provisions of its Documents and Operative



Documents do not and will not conflict with, result in a breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessor under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Lessor is a party or by which it or any of its property may be bound.

(D) It has made and continued its investment pursuant to the Operative Documents with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan) within the meaning of ERISA.

19. Termination and Reversion. If, within 40 days after the Effective Date, an order has not been entered by the Court in the Reorganization Proceedings (i) approving this Assignment, and (ii) confirming that this Assignment vests in Assignee all of Assignor's right, title and interest in the Lease with respect to the Equipment, then, at the request of the Lessor or the Assignee, the release of the Assignor's obligations under the Lease and the Assignee's assumption of rights and obligations under the Lease shall be terminated. In the event of a termination pursuant to the next preceding sentence: (i) Assignee shall reassign the

Lease to the Assignor, and Assignor shall reassume the obligations under the Lease as of the date of the request of the Lessor or the Assignee, (ii) the Assignee shall deliver all Units which are on Assignee's lines or under Assignee's control to Assignor's nearest interchange point as soon as reasonably possible, (iii) the Assignor shall be responsible to pay to the Assignee, as a cost of administration, an amount equal to the difference of (a) the sum of the amount paid by the Assignee as a rental payment under the Lease, and the costs of all repairs to the Units performed by the Assignee pursuant to this Assignment, less (b) the sum of daily rental charges at a rate of \$10 per Unit per day for each Unit in Satisfactory Condition and under the Assignee's control from and including the first day (after the Effective Date) upon which the Assignee had control of such Unit in Satisfactory Condition to and including the day the Assignee delivers such Unit to an interchange point of the Assignor, (iv) the obligation of the Assignee to make periodic payments to the Guarantor and the Assignor pursuant to Section 10 hereto shall terminate, and (v) the modifications to the Lease specified in Section 7 and Exhibit C hereto, shall be of no further force or effect, and the Lease shall thereafter read as if such modifications had not been made.

In the event of a termination pursuant to this Section 19, the Assignee shall continue to be responsible

to the Lessor, as to each Unit, for any liabilities or obligations which became due pursuant to Sections 6 or 7 of the Lease during the period from and including the date each Unit was delivered to an interchange point of the Assignee to and including the date such Unit is delivered by the Assignee to an interchange point of the Assignor.

20. Section Headings. The headings of sections contained in this Assignment are inserted for convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

21. Execution. This Assignment may be executed in counterparts, each of which so executed shall be deemed to be an original, provided that all such counterparts, taken together, shall constitute but one and the same agreement.

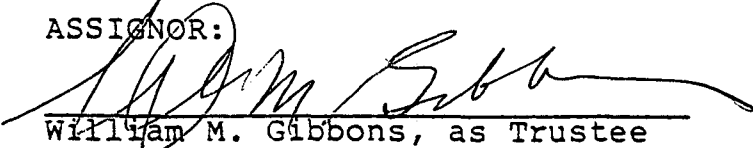
22. Entireties. This Assignment, together with the Guarantee, sets forth the entire agreement among the parties hereto with respect to the subject matter hereof.

23. Governing Law. This Assignment shall in all respects be governed by and construed in accordance with the laws of the State of New York.


IN WITNESS WHEREOF, Assignor and Assignee have

caused this Assignment to be executed on the dates set forth  
opposite the signatures below.

ASSIGNOR:

  
\_\_\_\_\_  
William M. Gibbons, as Trustee  
of the Property of Chicago, Rock  
Island and Pacific Railroad  
Company, and not individually

Dated: *September 30, 1980*

  
\_\_\_\_\_  
Witness

ASSIGNEE:

CONSOLIDATED RAIL CORPORATION

Dated:

By \_\_\_\_\_  
Vice President

[SEAL]

ATTEST:

\_\_\_\_\_  
Assistant Secretary

### CONSENT AND LEASE MODIFICATION

Each of the undersigned hereby consents to the Conrail Assignment and Assumption of Lease (the "Conrail Assignment") of which this Consent forms a part and agrees that, pursuant to the provisions of the Conrail Assignment, and as of the Effective Date, the Assignor thereunder is, subject to the limitations set forth in the Conrail Assignment, released of all of Assignor's obligations under the Lease arising after the Effective Date of the Conrail Assignment but is not released of liabilities arising in whole or in part pursuant to the terms of the Lease prior to the Effective Date.

Each of the undersigned hereby acknowledges that:

- (1) It has received a copy of the Conrail Assignment;
- (2) Attached to the Conrail Assignment as Exhibit B is a true copy of the Lease as amended to date;
- (3) As of the Effective Date, the Assignee is substituted as the Lessee under the Lease, on the terms set forth in the Conrail Assignment;

- (4) With respect to the obligations under the Lease arising prior to the Effective Date of the Conrail Assignment, the undersigned shall have recourse only against the Assignor or parties other than the Assignee for either damages or the correction of any default pursuant to the Lease arising prior to, or as a result of events occurring prior to, the Effective Date of the Conrail Assignment and hereby waive all rights to terminate the Lease which may arise solely as a result of the Conrail Assignment, all on the terms set forth in the Conrail Assignment;
- (5) The Assignee shall be permitted to change the identification numbers and reporting marks on the Equipment provided that (1) the Assignee promptly notifies the undersigned of any such change and preserves the markings on, and registration of, the Equipment disclosing and preserving the security interest of third parties as presently disclosed and (2) the Assignee makes such filings and deposits as are required to fulfill its representations and warranties pursuant to Section 17M of the Conrail Assignment;

- (6) Subject to Section 19 of the Conrail Assignment the Lease is hereby modified in accordance with Section 7 of the Conrail Assignment and the undersigned hereby consent to such modification; and
- (7) The Conditional Sale Agreement is hereby amended to permit the possession and use by Assignee of the Units listed in Exhibit A to the Conrail Assignment, pursuant to the Lease as amended. So long as the Assignee is not in default under the Lease, as amended, the secured party under the Conditional Sale Agreement shall not interfere with the Assignee's right of quiet enjoyment with respect to the Equipment.

IN WITNESS WHEREOF, the undersigned have caused this consent to be executed and sealed by their duly authorized officers on \_\_\_\_\_, 1980.

LESSOR:

UNILEASE NO. 24, INC.

By \_\_\_\_\_  
Vice President

(SEAL)

ATTEST:

\_\_\_\_\_  
Assistant Secretary

GIRARD BANK, AS AGENT

(SEAL)

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 30th day of September, 1980, before me personally appeared William M. Gibbons, to me personally known, who, being by me duly sworn, says that he is the Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, signer and sealer of the foregoing instrument, and he acknowledged same to be his free act and deed, as Trustee, before me.

Richard Allan Wise  
Notary Public

[Notarial Seal]

My Commission expires: December 2, 1982

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the Vice President of Consolidated Rail Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to  
me personally known, who, being by me duly sworn, says  
that he is the Vice President of Unilease No. 24, Inc.,  
that one of the seals affixed to the foregoing instrument  
is the corporate seal of said corporation, that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the  
free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is the Vice President of Girard Bank, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the  
foregoing instrument was the free act and deed of said  
corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

EXHIBIT ATO ASSIGNMENT AND ASSUMPTION OF LEASE

<u>UNIT DESIGNATION</u>	<u>NUMBER OF UNITS</u>	<u>RENTAL PAYMENT TO LESSOR PER UNIT</u>	<u>PERIODIC PAYMENT TO ASSIGNOR PER UNIT*</u>	<u>PERIODIC PAYMENT TO GUARANTOR PER UNIT*</u>
2494 C.F. Gondola Cars 52' - 100 ton (Rock Island Road Numbers 400100-400199, inclusive)  (Conrail Road Numbers - inclusive)	100	\$771.56	\$32.11	\$96.33

- 
- \* The Periodic Payments to the Assignor and the Guarantor shall be payable as directed by the Assignor and the Guarantor respectively.

EXHIBIT C

The Lease is modified as noted below.

- (a) The Lease is modified to substitute, as of the Effective Date, Assignee as "Lessee" with respect to the Equipment.
- (b) In Section 4, the first paragraph is amended by deleting beginning with the words "and (b) the date" in the fifth line of said paragraph through and including the words "Debtor for such rental" in the nineteenth line of said paragraph, and by deleting the words "the earlier of(a)" in the fifth line of said paragraph.
- (c) Section 7, lines 2-6 are deleted and the following substituted therefore:

"of Loss. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, such taking or requisitioning resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this lease (such occurrences being hereinafter called Casualty Occurrences),"

- (d) Section 8 is amended to read in its entirety as follows:

Section 8. Annual Reports. On or before April 30 in each year, but not under any circumstance later than May 30 of each year, commencing April 30, 1981, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the Effective Date of the Assignment and Assumption of Lease in the case of the first such statement) after said Effective Date and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request; (b) an accurate statement stating that, in the case of all Units repainted and repaired

during the period covered by such statement, the numbers and the markings required by paragraph 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced; (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles consistently applied and audited and certified by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor and Agent; (d) a certificate of an officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease."

- (e) Section 10, paragraphs (E) and (F) are deleted and replaced by the following:

"(E) a petition for reorganization under Section 1161 et seq of the Bankruptcy Code (as now constituted or as hereafter amended, including any successor provision thereto) or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168, or any successor provision, as the same may hereafter be amended; or

"(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been continued in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168 or any successor provision, as the same may hereafter be amended, or pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier."

- (f) Section 10 is further amended by adding the following paragraphs to the end of said section:

The Lessor shall forbear exercising its remedies hereunder arising out of an Event of Default pursuant to this Section 10 if, and so long as, (1) within 10 days of such Event of Default North American Car Corporation, as Guarantor (the "Guarantor") under a Guarantee Agreement entered

into as of July 31, 1980 with the Lessor (the "Guarantee"), shall have paid in full any unpaid monetary obligations due under this Lease, and (2) within thirty (30) days the Guarantor shall have cured any other Event of Default under this Lease. The Guarantor shall not be required to cure any Event of Default under this Lease the cure of which would require information or knowledge which the Guarantor cannot obtain with reasonable diligence and at reasonable expense. At any time after the Guarantor shall have made any payment under (1) above or cured any other default pursuant to (2) above or if there shall be an Event of Default hereunder caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of proceedings of the type described in item (F) of this Section 10, the Guarantor, at its option, may assume all the obligations of the Lessee provided that the following conditions have been met:

- (i) The Guarantor certifies to the Lessor that it is not then in default in respect of any obligations for the payment of principle or interest in respect of borrowed money, any conditional sale indebtedness or any equipment trust obligation;
- (ii) The Guarantor certifies to the Lessor that upon such assumption the Guarantor will not be in default under this Lease, which certification shall be accompanied by an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the same effect;
- (iii) The Guarantor directly assumes all the obligations of the Lessee under this Lease pursuant to an Assumption Agreement in form and substance satisfactory to the Lessor (the approval of which by such party shall not be unreasonably withheld), which

Assumption Agreement will, at the option of the Guarantor and without any approval of the Lessor, provide that those Sections of this Lease listed in Exhibit A to the Guarantee Agreement described above will be amended on and as of the effective date of such Assumption Agreement to read as provided in said Exhibit A; and

- (iv) The Guarantor delivers to the Lessor an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the effect that such Assumption Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms (except to the extent limited by any bankruptcy or other similar laws) and shall have caused such Assumption Agreement to be filed and recorded in accordance with the provisions of Section 16 hereof.

The Lessor agrees to execute and deliver the above mentioned Assumption Agreement within 10 days after tender thereof, provided that it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it and that all other procedures referred to above have been complied with. The Lessee agrees that, upon execution and delivery of such Assumption Agreement by the Lessor and the Guarantor, all rights of the Lessee to the use of the Units shall absolutely cease and terminate, but the Lessee shall remain liable as herein provided and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Lessor; it being understood and agreed however, that the obligations of the Guarantor under such Assumption Agreement,



this Lease and the Guarantee shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

Compliance by the Guarantor with the procedures necessary for assumption as noted above in this Section 10 and the execution and delivery of the above mentioned Assumption Agreement by both the Guarantor and the Lessor shall for the purposes of this Lease constitute a cure of any Event of Default caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of any proceedings of the type described in item (F) of this Section 10.

The Lessor agrees to notify the Guarantor promptly in writing upon its becoming aware of any condition or event which constitutes an Event of Default hereunder, but any failure to do so shall not affect in any way the rights and remedies of the Lessor under this Lease and the Guarantee.

- (g) Section 11, paragraph 2 is amended by deleting the period at the end of such paragraph and adding at the end of the paragraph the following:

"provided however, that such storage shall not exceed 180 days (such 180 day period to be referred to as the 'Storage Period')."

- (h) Section 11, paragraph 3 is amended by deleting the period at the end of the paragraph and adding the following:

"provided however, that such storage shall not exceed the Storage Period."

- (i) Section 11, paragraph 4, lines 1-3 are deleted and the following substituted therefor:

"The assembling, delivery, storage and transportation of the Units during the Storage Period as herein provided shall be at the cost, expense and risk of the Lessee. During the Storage Period"

- (j) Section 12, paragraph 4 is deleted and the following paragraphs inserted in lieu thereof:

"So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights over which railroad equipment of the Lessee, or any such affiliate, is regularly operated pursuant to contract, and also to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of the Lease and the Conditional Sale Agreement; provided however, that the Lessee shall not use or permit the use of any Unit in service involving the operation and maintenance thereof outside the United States of America, except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America.

"The Lessee agrees that at all times during the terms of this Lease, the Units will be used as rolling stock within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38 property" within the meaning of the Code."

- (k) In Section 14, all references to "early termination" pursuant to clause (b) of Section 4 are deleted.
- (l) All references to "Lessee" in Section 15, are amended to refer to the "Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company", except in paragraphs D, E., and K, and the following is added to the end of paragraph J:

"This Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment have also been duly filed and recorded with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada."

- (m) Section 16, paragraph 1 is amended by deleting the period at the end of the first sentence and then substituting the following in lieu thereof:

"and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada."

- (n) Section 18(b) of the Lease is amended in its entirety to read as follows:

"If to the Lessee, to

Conrail Corporation  
1138 Six Penn Central Plaza  
Philadelphia, Pennsylvania 19104  
Attn: Legal Department"

- (o) Section 20 is amended in its entirety to read as follows:

"The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor as an additional named insured or loss payee, as its interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event),

shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1981, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to a Unit and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respects of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this paragraph 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing."

- (p) Section 21 is amended by adding the following paragraph to the end of said Section:

"Anything to the contrary in this Section 21 notwithstanding, Consolidated Rail Corporation ("Conrail") as assignee of the Trustee of the Property of the Chicago Rock Island and Pacific Railroad Company, hereby agrees to indemnify Lessor only for loss of tax benefits arising out of Conrail's acts or omissions.

- (q) Schedule A is amended by deleting the entry in the column headed "Lessee's Road Numbers" and by replacing such entry with the following: "Conrail Numbers \_\_\_\_\_ -  
\_\_\_\_\_."

RECORDATION NO. 12259 Filed 1425

OCT 6 1980 -3 00 PM  
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION of lease (the "Assignment") dated as of this first day of August, 1980 by and between William M. Gibbons, as Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Assignor") and Consolidated Rail Corporation (the "Assignee").

W I T N E S S E T H:

WHEREAS, Assignor is the lessee of certain units of railroad equipment described in Exhibit A attached hereto and made a part hereof (the "Equipment" or the "Units" or individually a "Unit") pursuant to the Lease of such Equipment dated as of March 15, 1978 between the Assignor and Unilease No. 24, Inc. (the "Lessor"), as amended to date and attached hereto as Exhibit B (the "Lease");

WHEREAS, to induce the Lessor to consent to this assignment, North American Car Corporation (the "Guarantor") has agreed, pursuant to a Guarantee Agreement (the "Guarantee") dated as of July 31, 1980 with the Lessor, to guarantee all obligations and covenants of the Assignee under this Assignment and under the Lease; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to accept an assignment from Assignor of all of Assignor's right, leasehold title and interest under the Lease and to the Equipment subject to the terms and conditions of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of Assignor and Assignee and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Definitions. For all purposes of this Assignment, unless otherwise expressly provided herein, all initially capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Lease.

2. Effective Date. The Effective Date of this Assignment shall be the later of (1) the latest of the dates set forth opposite the signature lines of the Assignor, Assignee, Lessor and Agent and (2) receipt by the Lessor of an opinion of counsel for the Assignee pursuant to Section 6 hereof; provided, however, that this Assignment may be terminated after the Effective Date pursuant to the provisions of Section 19 hereof.

3. Assignment. As of the Effective Date, Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest under the Lease and to the Equipment, subject to the terms and conditions set forth in Sections 2, 4, 13 and 19 hereof.

This Assignment shall be effective only as to the equipment described on Exhibit A hereto.

4. Assumption. Assignee hereby accepts the assignment set forth above and assumes all of the obligations of Lessee under the Lease with respect to the Equipment arising after the Effective Date and agrees to perform and comply with all of the obligations, covenants and conditions of Lessee under the Lease other than obligations or representations of said Lessee referring to a particular point in time prior to the Effective Date.

Assignee shall be responsible for the payment of rent due under the Lease and the performance and compliance with all other terms and conditions of the Lease required to be performed by Lessee under the Lease beginning as of the Effective Date of this Assignment. Assignee expressly does not assume any liabilities or obligations arising under or which have accrued in whole or in part pursuant to the terms of the Lease prior to the Effective Date; provided, however,



that the Assignee shall be responsible for that portion of any liability or obligation which shall have accrued in part after the Effective Date; and provided further, however, that the Assignee shall be responsible for only those liabilities or obligations arising from use of the Equipment outside the United States which result solely and directly from use of the Equipment after the Effective Date.

Subject to the provisions of the next succeeding sentence and Section 19 hereof, as of the Effective Date, Assignor will be released from its obligations under the Lease. Anything to the contrary in this Assignment notwithstanding, any liabilities or obligations of any kind whatsoever arising from the Lease (including, but not limited to, liability for loss of tax benefits pursuant to Section 21 thereof) which are not assumed by the Assignee remain the responsibility of the Assignor and are expressly not released pursuant to this Assignment.

5. Related Documents. The Assignee acknowledges that the Lease, as modified by this Assignment, and the Equipment are subject to the terms and conditions of (1) a Finance Agreement, dated as of March 15, 1978 between Girard Trust Bank (formerly Girard Bank), as Agent (the "Agent") and The Paul Revere Life Insurance Company (the "Investor"),

(2) the Conditional Sale Agreement, (3) the Assignment, (4) the Lease Assignment dated as of March 15, 1978 from the Lessor to the Agent, and (5) that certain "Letter of Agreement re March 15, 1978 Finance Agreement" dated as of March 31, 1980 among the Lessor, the Investor, and the Agent (these five documents, together with the Lease being hereinafter referred to collectively as the "Operative Documents").

6. Markings and Filings. Assignee agrees to restencil and renumber the Equipment at Assignee's expense to eliminate the reporting marks of Assignor and/or Chicago, Rock Island and Pacific Railroad Company as soon as reasonably possible after the Effective Date. Assignee further agrees to preserve the markings of the Lessor and the Agent required pursuant to the Conditional Sale Agreement and the Lease.

Assignee agrees to make, at Assignee's expense, such filings, deposits, and publications as may be required under the Operative Documents and under any encumbrance on the Lease or the Equipment created by or pursuant to the Operative Documents, so as to preserve all security interests created by or pursuant to the Operative Documents and to reflect this Assignment and the renumbering of the Equipment. Such filings, deposits, and publications shall be made on or

prior to the Effective Date. Assignee shall, within twenty (20) days after such filings, provide to the Lessor and the Agent copies of the filed, deposited, or published documents.

The Assignee agrees to provide the Lessor and the Agent an opinion of counsel for the assignee, dated as of the Effective Date, in form and substance satisfactory to it and to Messrs. Donovan Leisure Newton & Irvine, special counsel to the Lessor, to the effect that the terms and conditions of Section 17M hereof have been complied with and that all statements and facts represented and warranted by the Assignee in such Section 17M are true and accurate to the best knowledge of such counsel as of the date of such opinion.

7. Modification of Lease. As of the Effective Date, the Lease is modified in accordance with Exhibit C hereto, subject to the Lessor's and Agent's consent and subject to the provisions of Section 19 hereof.

8. Third Party Beneficiary. The parties hereby acknowledge that both the Lessor and the Guarantor are third party beneficiaries of this Assignment.

9. Change in Assignment. This Assignment may not be modified, amended or changed in any way without the express written consent of the Lessor.

10. Payments and Prorations. Assignee agrees to pay, in addition to and totally separate from, rental payments

due pursuant to Section 3 of the Lease, periodic payments to the Guarantor and the Assignor in accordance with Exhibit A hereto at such times as rental payments are due under the Lease beginning, with respect to each Unit of Equipment, on the first rental payment date occurring after both the Effective Date and the first date such Unit is both under the control of the Assignee and in Satisfactory Condition, and ending, with respect to each Unit of Equipment, on the earlier of the date on which the last rental payment due under the Lease is paid (excluding the term of any exercised renewal options) or the date on which the Casualty Value with respect to such Unit of Equipment is paid. The first periodic payments to the Assignor, and the Guarantor (and any accrued or prepaid items or obligations) shall be prorated on a per diem and per Unit basis from the first date after the Effective Date upon which each Unit is both under the control of the Assignee and in Satisfactory Condition to the next periodic rental payment date under the Lease immediately following such date.

The Guarantor shall calculate the foregoing payments and shall invoice Assignee and Assignor. Assignee and Assignor agree to pay the prepaid or accrued items and obligations within 10 days after receipt of invoice.

The Assignor agrees to make all rental payments due under the Lease prior to the Effective Date.

11. Petitions. Assignee agrees to make, and Assignor agrees to cooperate with respect to, all filings with the Interstate Commerce Commission and all deposits with the Registrar General of Canada, which are necessary to protect the security interests of the Lessor and the Agent in the Lease and the Equipment, and Assignor agrees to make, with Assignee's cooperation, any petition to the Reorganization Court which is necessary pursuant to this Assignment.

12. Equipment Compensation and Use. The Assignor shall be entitled to all compensation with respect to the Equipment and its use prior to the Effective Date, and Assignee shall be entitled to all such compensation and use thereafter. Assignor and Assignee agree that they shall respectively bear the risks and rewards of the Equipment and the Lease arising before and after the Effective Date. Nothing in this Section 12 shall affect the respective obligations of the Assignor and the Assignee under the Lease.

13. Possession, Inspection and Repair. Possession of the Equipment shall be delivered to Assignee as soon after the Effective Date as is reasonably possible or at any time prior thereto upon mutual agreement of all parties hereto.

Assignor's performance under this Section may be delayed by reasons beyond Assignor's reasonable control including without limitation, possession of Units by others.

The Equipment shall be delivered to Assignee, at the points of interchange with Assignee's lines which are nearest the then current locations of the Equipment, whether the Equipment is then currently on the lines of Assignee or on other lines. Assignee shall pay all costs of movement of the Units from their current locations to the points of interchange with Assignee's lines. Assignee shall inform the Guarantor and the Assignor of the delivery times and locations of the Units. The Assignee and the Assignor, or an agent of Assignor, shall jointly inspect the Equipment. If any Unit is not found to be in condition acceptable under FRA safety standards and for AAR unrestricted interchange in good operating condition, ordinary wear and tear excepted ("Satisfactory Condition"), at the option of the Assignee, designated by notice in writing to Assignor and Guarantor within 10 days after such inspection, the Assignee shall select one of the following alternatives:

- (a) If a Casualty Occurrence as defined in the Lease has occurred such Unit shall be excluded from the provisions of Section 3 hereof and Assignor shall pay the Casualty Value for such Unit as specified in the Lease; or

- (b) Such unit shall be repaired at the Assignee's expense by the Guarantor at the Guarantor's usual rate of charges which is subject to change without notice; or
- (c) Such Unit shall be repaired at the Assignee's expense at a repair facility designated by the Guarantor at such facility's usual rate of charges; or
- (d) Such Unit shall be repaired at the Assignee's expense at a repair facility operated by Assignee at such facility's usual rate of charges, such repairs to be done on a timely basis not to take longer than similar repairs done on cars owned by the Assignee.

The repair described in (b), (c) or (d) above shall be limited to the repair of any damage or condition discovered at the inspection and which renders, in the reasonable opinion of the inspectors, the Unit not in Satisfactory Condition.

Assignee shall pay the cost of repair pursuant to (b), (c) or (d) above, but may deduct from the Periodic Payments to the Assignor as shown in Exhibit A the cost of repair plus interest on the portion of such costs unreimbursed, from time to time, at the rate of 12 percent (12%) per annum.

If notice in writing with respect to the inspection is not received by the Guarantor within ten (10) days after delivery of each Unit of Equipment or if the Assignee does not participate in the inspection described above, any obligation to pay the Casualty Value for such Unit of Equipment pursuant to the Lease shall become the responsibility of the Assignee, and to the extent that the Assignee assumes

all of Assignor's obligations under this Section 13 with respect to such Unit of Equipment, such obligations of the Assignor shall thereupon become null and void and of no further effect.

The Assignor's inspection may be made by an inspector of Assignor which inspector may be selected by the Guarantor.

14. Set-offs for Late Delivery and Repair. To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit for a period when such Unit is not both delivered to the Assignee and in Satisfactory Condition, the Assignee may set-off such rental payment, including interest on the portion of such amount as remains unreimbursed, from time to time, at the rate of 12 percent (12%) per annum, against the Periodic Payments to both the Assignor and the Guarantor, as shown in Exhibit A hereto.

To the extent that the Assignee makes a rental payment to the Lessor pursuant to the Lease for a Unit which is not in Satisfactory Condition prior to completion of repair thereof or incurs charges for repairs to a Unit pursuant to Section 13(d) hereof, the Assignee may set-off such payments or charges against the Periodic Payments to the Assignor as shown in Exhibit A hereto, such set-off to be junior in priority to and paid after any set-off allowed pursuant to the first paragraph of this Section 14.



To the extent that any amounts owed to the Lessor by the Assignor under the Lease remain due, the Assignee shall set-off such amounts against the Periodic Payments to the Assignor as shown in Exhibit A hereto and pay such amounts directly to the Lessor, such set-off to be junior in priority to and paid after any set-offs allowed pursuant to the first two paragraphs of this Section 14.

15. Fees and Expenses. Assignee shall pay on demand inspector's fees and movement expenses relating to delivery of the Equipment, costs of restenciling and cost of publication under restenciled numbers in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

16. Limitations on Set-Off. The Assignee is hereby informed of the interests of the Lessor in the rental payments due under the Lease and the interests of the Assignor and the Guarantor in the periodic payments due hereunder as described in Exhibit A hereto, and that the agreements contained in this Section are a material consideration for the Assignment. Notwithstanding any other obligations of the Assignor to the Assignee, or any claim which the Assignee may now have or acquire in the future against the Assignor, Assignee agrees that all payments hereunder shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever except as permitted under Sections 11 and 12 hereof. Any and all such obligations,

if any, howsoever arising, shall be and remain enforceable by Assignee against the Assignor and the Property of the Chicago, Rock Island and Pacific Railroad Company.

17. Warranties and Representations of the Assignee.

The Assignee warrants and represents to each of the other parties hereto as follows:

A. This Assignment has been duly authorized, executed and delivered by the Assignee and constitutes a valid, legal and binding obligation of the Assignee, enforceable in accordance with its terms;

B. Neither the execution and delivery of this Assignment nor the consummation of the transaction herein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Assignee will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Assignee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

C. The Assignee shall not operate or otherwise utilize the Units in any and all jurisdictions for which any approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary or in which the Assignee shall become subject to such jurisdiction or regulation, until the Assignee shall have either (i) obtained such approvals, orders or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Unit or Units in any and all such jurisdictions, except for claims, liabilities penalties or damages arising from acts or omissions of the Lessor;

D. The Assignee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has the corporate power and authority and legal right to carry on its business as now conducted and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect

its ability to perform its obligations under the Operative Documents or the interests of any other party hereto;

E. There is no proceeding pending, or to the knowledge of the Lessee threatened against or affecting the Lessee or any of its property in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Assignee, or the ability of the Assignee to perform its obligations under this Assignment, except as set forth in the Memorandum for Private Investors dated May 1, 1980 as supplemented on June 26, 1980 and August 18, 1980 (the "Memorandum"), furnished to the parties hereto. The Assignee is not in default with respect to any judgment, award or order of any court, governmental authority or arbitration board or tribunal, except as set forth in the Memorandum. Since June 30, 1980, there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Assignee, except as set forth in the Memorandum.

F. Except as set forth in the Memorandum, all tax returns required to be filed by the Assignee in any jurisdiction have in fact been filed, and all taxes, assessments, fees

and other governmental charges upon the Assignee, or upon any of its properties, income or franchises, which are due and payable by the Assignee have been paid or are being contested in good faith in an appropriate manner and the provisions for taxes on the books of the Assignee are adequate. The Assignee does not know of any proposed or potential additional material tax assessment or basis for such assessment against it.

G. The Assignee has furnished to the Vendee, the Lessor and the Investor the consolidated balance sheets of the Assignee for the periods ending June 30, 1980 and December 31, 1979, and the related consolidated statements of income and retained earnings for the periods then ended, certified, in the case of the year-end statements, by Coopers & Lybrand, independent certified public accountants, and, in the case of the June 30, 1980 statements, by the Chief Financial Officer of the Assignee; such consolidated financial statements are in accordance with the books and records of the Assignee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby; and such statements present fairly the financial condition of the Assignee at such dates and the results of its operations for such periods.

H. As of the Effective Date, the Assignee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Units, except only for the rights of the Assignee and the Assignor under this Assignment and the Lease.

I. As of the Effective Date, the Units are free from all claims, liens, security interests and other encumbrances arising at any time on or after the Assignee has accepted delivery of such Units pursuant to Section 13 of this Assignment other than those created by the Operative Documents, the rights of the Assignor and Assignee under this Lease, and other than those resulting from claims against the Lessor not related to the ownership of the Units.

J. The Assignee is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business, which violation or failure to obtain might materially and adversely affect its ability (financial or other) to perform its obligations under this Assignment and the Lease.

K. Except as set forth in the Memorandum the Assignee has good title to or valid leasehold estates in all the property it purports to own or lease (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the most recent balance sheet referred to in Section 17G (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business).

L. The financial statements referred to in Section 17G do not, nor do the Memorandum or any other written statement furnished by the Assignee in connection with the transactions contemplated thereby, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein not misleading.

M. This Assignment has been duly filed pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway General of Canada and such filing pursuant to 49 U.S.C. § 11303 protects the Lessor's rights in and to the Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state

or local government or agency thereof is necessary in order to protect the rights of the Agent or the Lessor under this Assignment or the Lease in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor under the Lease in Canada or any province thereof.

N. The Assignee is not in default in the payment of the principal of or interest on any indebtedness for borrowed money.

O. The Assignee represents that it is not entering into this Assignment, or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, the Investor, the Builder or the Lessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

In the event that any representation herein set forth which is qualified by a reference to the knowledge of the Assignee shall prove inaccurate in any material respect, the Assignee shall promptly use its best efforts to remedy or cure such condition to the extent necessary to restore



the accuracy of such representation, and shall indemnify and hold harmless the Owner, the Lessor, the Agent and the Investor from all liabilities, damages or costs arising out of such inaccuracy.

18. Warranties and Representations of the Lessor.

The Lessor warrants and represents to each of the other parties hereto as follows:

A. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and has the corporate power, authority and legal right to carry on its business as now conducted and is duly authorized to execute and deliver the documents required of it under this agreement (Documents) and to fulfill and comply with the terms, conditions and provisions of those documents and the Operative Documents.

B. Its Documents and Operative Documents have been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding agreements of the Lessor, enforceable against the Lessor in accordance with their terms.

C. The execution, delivery and compliance by the Lessor with the provisions of its Documents and Operative

Documents do not and will not conflict with, result in a breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessor under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Lessor is a party or by which it or any of its property may be bound.

(D) It has made and continued its investment pursuant to the Operative Documents with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangement or understanding by it in any way involving, any employee benefit plan (other than a governmental plan) within the meaning of ERISA.

19. Termination and Reversion. If, within 40 days after the Effective Date, an order has not been entered by the Court in the Reorganization Proceedings (i) approving this Assignment, and (ii) confirming that this Assignment vests in Assignee all of Assignor's right, title and interest in the Lease with respect to the Equipment, then, at the request of the Lessor or the Assignee, the release of the Assignor's obligations under the Lease and the Assignee's assumption of rights and obligations under the Lease shall be terminated. In the event of a termination pursuant to the next preceding sentence: (i) Assignee shall reassign the

Lease to the Assignor, and Assignor shall reassume the obligations under the Lease as of the date of the request of the Lessor or the Assignee, (ii) the Assignee shall deliver all Units which are on Assignee's lines or under Assignee's control to Assignor's nearest interchange point as soon as reasonably possible, (iii) the Assignor shall be responsible to pay to the Assignee, as a cost of administration, an amount equal to the difference of (a) the sum of the amount paid by the Assignee as a rental payment under the Lease, and the costs of all repairs to the Units performed by the Assignee pursuant to this Assignment, less (b) the sum of daily rental charges at a rate of \$10 per Unit per day for each Unit in Satisfactory Condition and under the Assignee's control from and including the first day (after the Effective Date) upon which the Assignee had control of such Unit in Satisfactory Condition to and including the day the Assignee delivers such Unit to an interchange point of the Assignor, (iv) the obligation of the Assignee to make periodic payments to the Guarantor and the Assignor pursuant to Section 10 hereto shall terminate, and (v) the modifications to the Lease specified in Section 7 and Exhibit C hereto, shall be of no further force or effect, and the Lease shall thereafter read as if such modifications had not been made.

In the event of a termination pursuant to this Section 19, the Assignee shall continue to be responsible

to the Lessor, as to each Unit, for any liabilities or obligations which became due pursuant to Sections 6 or 7 of the Lease during the period from and including the date each Unit was delivered to an interchange point of the Assignee to and including the date such Unit is delivered by the Assignee to an interchange point of the Assignor.

20. Section Headings. The headings of sections contained in this Assignment are inserted for convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

21. Execution. This Assignment may be executed in counterparts, each of which so executed shall be deemed to be an original, provided that all such counterparts, taken together, shall constitute but one and the same agreement.

22. Entireties. This Assignment, together with the Guarantee, sets forth the entire agreement among the parties hereto with respect to the subject matter hereof.

23. Governing Law. This Assignment shall in all respects be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, Assignor and Assignee have

caused this Assignment to be executed on the dates set forth  
opposite the signatures below.

ASSIGNOR:

William M. Gibbons, as Trustee  
of the Property of Chicago, Rock  
Island and Pacific Railroad  
Company, and not individually

Dated:

Witness

ASSIGNEE:

CONSOLIDATED RAIL CORPORATION

Dated:

By Vice President

[SEAL]

ATTEST:

Assistant Secretary

## CONSENT AND LEASE MODIFICATION

Each of the undersigned hereby consents to the Conrail Assignment and Assumption of Lease (the "Conrail Assignment") of which this Consent forms a part and agrees that, pursuant to the provisions of the Conrail Assignment, and as of the Effective Date, the Assignor thereunder is, subject to the limitations set forth in the Conrail Assignment, released of all of Assignor's obligations under the Lease arising after the Effective Date of the Conrail Assignment but is not released of liabilities arising in whole or in part pursuant to the terms of the Lease prior to the Effective Date.

Each of the undersigned hereby acknowledges that:

- (1) It has received a copy of the Conrail Assignment;
- (2) Attached to the Conrail Assignment as Exhibit B is a true copy of the Lease as amended to date;
- (3) As of the Effective Date, the Assignee is substituted as the Lessee under the Lease, on the terms set forth in the Conrail Assignment;

- (4) With respect to the obligations under the Lease arising prior to the Effective Date of the Conrail Assignment, the undersigned shall have recourse only against the Assignor or parties other than the Assignee for either damages or the correction of any default pursuant to the Lease arising prior to, or as a result of events occurring prior to, the Effective Date of the Conrail Assignment and hereby waive all rights to terminate the Lease which may arise solely as a result of the Conrail Assignment, all on the terms set forth in the Conrail Assignment;
- (5) The Assignee shall be permitted to change the identification numbers and reporting marks on the Equipment provided that (1) the Assignee promptly notifies the undersigned of any such change and preserves the markings on, and registration of, the Equipment disclosing and preserving the security interest of third parties as presently disclosed and (2) the Assignee makes such filings and deposits as are required to fulfill its representations and warranties pursuant to Section 17M of the Conrail Assignment;

- (6) Subject to Section 19 of the Conrail Assignment the Lease is hereby modified in accordance with Section 7 of the Conrail Assignment and the undersigned hereby consent to such modification; and
- (7) The Conditional Sale Agreement is hereby amended to permit the possession and use by Assignee of the Units listed in Exhibit A to the Conrail Assignment, pursuant to the Lease as amended. So long as the Assignee is not in default under the Lease, as amended, the secured party under the Conditional Sale Agreement shall not interfere with the Assignee's right of quiet enjoyment with respect to the Equipment.

IN WITNESS WHEREOF, the undersigned have caused this consent to be executed and sealed by their duly authorized officers on \_\_\_\_\_, 1980.

LESSOR:

UNILEASE NO. 24, INC.

By \_\_\_\_\_  
Vice President

(SEAL)

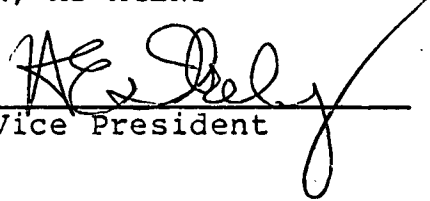
ATTEST:

\_\_\_\_\_  
Assistant Secretary



GIRARD BANK, AS AGENT

By

  
Vice President

(SEAL)

ATTEST: C. H. DOUGHERTY

  
Assistant Secretary

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared William M. Gibbons, to me personally known, who, being by me duly sworn, says that he is the Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, signer and sealer of the foregoing instrument, and he acknowledged same to be his free act and deed, as Trustee, before me.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the Vice President of Consolidated Rail Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980,  
before me personally appeared \_\_\_\_\_, to  
me personally known, who, being by me duly sworn, says  
that he is the Vice President of Unilease No. 24, Inc.,  
that one of the seals affixed to the foregoing instrument  
is the corporate seal of said corporation, that said instrument  
was signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the  
free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

STATE OF PENNSYLVANIA )  
 ) SS.  
COUNTY OF PHILADELPHIA )

On this 29<sup>th</sup> day of SEPTEMBER, 1980,  
before me personally appeared H. E. IKELER, JR., to me  
personally known, who, being by me duly sworn, says that he  
is the Vice President of Girard Bank, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed  
on behalf of said corporation by authority of its Board of  
Directors, and he acknowledged that the execution of the  
foregoing instrument was the free act and deed of said  
corporation.

Diane A. Baxter  
Notary Public

[Notarial Seal]

My Commission expires: \_\_\_\_\_

DIANE A. BAXTER, NOTARY PUBLIC  
PHILADELPHIA, PHILADELPHIA COUNTY  
MY COMMISSION EXPIRES AUG. 31, 1981  
Member, Pennsylvania Association of Notaries

EXHIBIT ATO ASSIGNMENT AND ASSUMPTION OF LEASE

<u>UNIT DESIGNATION</u>	<u>NUMBER OF UNITS</u>	<u>RENTAL PAYMENT TO LESSOR PER UNIT</u>	<u>PERIODIC PAYMENT TO ASSIGNOR PER UNIT*</u>	<u>PERIODIC PAYMENT TO GUARANTOR PER UNIT*</u>
2494 C.F. Gondola Cars 52' - 100 ton (Rock Island Road Numbers 400100-400199, inclusive)	100	\$771.56	\$32.11	\$96.33
(Conrail Road Numbers - inclusive)				

- 
- \* The Periodic Payments to the Assignor and the Guarantor shall be payable as directed by the Assignor and the Guarantor respectively.

EXHIBIT C

The Lease is modified as noted below.

- (a) The Lease is modified to substitute, as of the Effective Date, Assignee as "Lessee" with respect to the Equipment.
- (b) In Section 4, the first paragraph is amended by deleting beginning with the words "and (b) the date" in the fifth line of said paragraph through and including the words "Debtor for such rental" in the nineteenth line of said paragraph, and by deleting the words "the earlier of(a)" in the fifth line of said paragraph.
- (c) Section 7, lines 2-6 are deleted and the following substituted therefore:

"of Loss. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, such taking or requisitioning resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this lease (such occurrences being hereinafter called Casualty Occurrences),"

- (d) Section 8 is amended to read in its entirety as follows:

Section 8. Annual Reports. On or before April 30 in each year, but not under any circumstance later than May 30 of each year, commencing April 30, 1981, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the Effective Date of the Assignment and Assumption of Lease in the case of the first such statement) after said Effective Date and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request; (b) an accurate statement stating that, in the case of all Units repainted and repaired

during the period covered by such statement, the numbers and the markings required by paragraph 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced; (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles consistently applied and audited and certified by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor and Agent; (d) a certificate of an officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease."

- (e) Section 10, paragraphs (E) and (F) are deleted and replaced by the following:

"(E) a petition for reorganization under Section 1161 et seq of the Bankruptcy Code (as now constituted or as hereafter amended, including any successor provision thereto) or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168, or any successor provision, as the same may hereafter be amended; or

"(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been continued in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. paragraph 1168 or any successor provision, as the same may hereafter be amended, or pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier."

- (f) Section 10 is further amended by adding the following paragraphs to the end of said section:

The Lessor shall forbear exercising its remedies hereunder arising out of an Event of Default pursuant to this Section 10 if, and so long as, (1) within 10 days of such Event of Default North American Car Corporation, as Guarantor (the "Guarantor") under a Guarantee Agreement entered

into as of July 31, 1980 with the Lessor (the "Guarantee"), shall have paid in full any unpaid monetary obligations due under this Lease, and (2) within thirty (30) days the Guarantor shall have cured any other Event of Default under this Lease. The Guarantor shall not be required to cure any Event of Default under this Lease the cure of which would require information or knowledge which the Guarantor cannot obtain with reasonable diligence and at reasonable expense. At any time after the Guarantor shall have made any payment under (1) above or cured any other default pursuant to (2) above or if there shall be an Event of Default hereunder caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of proceedings of the type described in item (F) of this Section 10, the Guarantor, at its option, may assume all the obligations of the Lessee provided that the following conditions have been met:

- (i) The Guarantor certifies to the Lessor that it is not then in default in respect of any obligations for the payment of principle or interest in respect of borrowed money, any conditional sale indebtedness or any equipment trust obligation;
- (ii) The Guarantor certifies to the Lessor that upon such assumption the Guarantor will not be in default under this Lease, which certification shall be accompanied by an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the same effect;
- (iii) The Guarantor directly assumes all the obligations of the Lessee under this Lease pursuant to an Assumption Agreement in form and substance satisfactory to the Lessor (the approval of which by such party shall not be unreasonably withheld), which



Assumption Agreement will, at the option of the Guarantor and without any approval of the Lessor, provide that those Sections of this Lease listed in Exhibit A to the Guarantee Agreement described above will be amended on and as of the effective date of such Assumption Agreement to read as provided in said Exhibit A; and

- (iv) The Guarantor delivers to the Lessor an opinion of Messrs. Pederson & Houpt, a professional corporation, or other independent counsel, which opinion and counsel shall both be acceptable to the Lessor, to the effect that such Assumption Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms (except to the extent limited by any bankruptcy or other similar laws) and shall have caused such Assumption Agreement to be filed and recorded in accordance with the provisions of Section 16 hereof.

The Lessor agrees to execute and deliver the above mentioned Assumption Agreement within 10 days after tender thereof, provided that it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it and that all other procedures referred to above have been complied with. The Lessee agrees that, upon execution and delivery of such Assumption Agreement by the Lessor and the Guarantor, all rights of the Lessee to the use of the Units shall absolutely cease and terminate, but the Lessee shall remain liable as herein provided and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Lessor; it being understood and agreed however, that the obligations of the Guarantor under such Assumption Agreement,

this Lease and the Guarantee shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

Compliance by the Guarantor with the procedures necessary for assumption as noted above in this Section 10 and the execution and delivery of the above mentioned Assumption Agreement by both the Guarantor and the Lessor shall for the purposes of this Lease constitute a cure of any Event of Default caused by the entry of an order or decree of the type described in item (E) of this Section 10 or the commencement by or against the Lessee of any proceedings of the type described in item (F) of this Section 10.

The Lessor agrees to notify the Guarantor promptly in writing upon its becoming aware of any condition or event which constitutes an Event of Default hereunder, but any failure to do so shall not affect in any way the rights and remedies of the Lessor under this Lease and the Guarantee.

- (g) Section 11, paragraph 2 is amended by deleting the period at the end of such paragraph and adding at the end of the paragraph the following:

"provided however, that such storage shall not exceed 180 days (such 180 day period to be referred to as the 'Storage Period')."

- (h) Section 11, paragraph 3 is amended by deleting the period at the end of the paragraph and adding the following:

"provided however, that such storage shall not exceed the Storage Period."

- (i) Section 11, paragraph 4, lines 1-3 are deleted and the following substituted therefor:

"The assembling, delivery, storage and transportation of the Units during the Storage Period as herein provided shall be at the cost, expense and risk of the Lessee. During the Storage Period"

- (j) Section 12, paragraph 4 is deleted and the following paragraphs inserted in lieu thereof:

"So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights over which railroad equipment of the Lessee, or any such affiliate, is regularly operated pursuant to contract, and also to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of the Lease and the Conditional Sale Agreement; provided however, that the Lessee shall not use or permit the use of any Unit in service involving the operation and maintenance thereof outside the United States of America, except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America.

"The Lessee agrees that at all times during the terms of this Lease, the Units will be used as rolling stock within the meaning of Section 48(a)(2)(B)(ii) of the Code (as hereinafter defined). The Lessee agrees that it will not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "Section 38 property" within the meaning of the Code."

- (k) In Section 14, all references to "early termination" pursuant to clause (b) of Section 4 are deleted.
- (l) All references to "Lessee" in Section 15, are amended to refer to the "Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company", except in paragraphs D, E., and K, and the following is added to the end of paragraph J:

"This Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment have also been duly filed and recorded with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada."

- (m) Section 16, paragraph 1 is amended by deleting the period at the end of the first sentence and then substituting the following in lieu thereof:

"and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada."

- (n) Section 18(b) of the Lease is amended in its entirety to read as follows:

"If to the Lessee, to

Conrail Corporation  
1138 Six Penn Central Plaza  
Philadelphia, Pennsylvania 19104  
Attn: Legal Department"

- (o) Section 20 is amended in its entirety to read as follows:

"The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor as an additional named insured or loss payee, as its interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event),

shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1981, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee with respect to a Unit and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respects of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this paragraph 7, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing."

- (p) Section 21 is amended by adding the following paragraph to the end of said Section:

"Anything to the contrary in this Section 21 notwithstanding, Consolidated Rail Corporation ("Conrail") as assignee of the Trustee of the Property of the Chicago Rock Island and Pacific Railroad Company, hereby agrees to indemnify Lessor only for loss of tax benefits arising out of Conrail's acts or omissions.

- (q) Schedule A is amended by deleting the entry in the column headed "Lessee's Road Numbers" and by replacing such entry with the following: "Conrail Numbers \_\_\_\_\_ -  
\_\_\_\_\_."